UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-10-001-8716

NOV 1 0 2010

THE ADMINISTRATOR

The Honorable Susan Collins
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator Collins:

I am pleased to support the charter renewal of the National Environmental Education Advisory Council (NEEAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NEEAC is in the public interest and supports the U.S. Environmental Protection Agency (EPA) in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Committee will be in effect for two years from the date it is filed with Congress. After the two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App.2 § 14).

If you have any questions or comments, please contact me or your staff may contact Lynda Beck in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3637.

Sincerely,

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

NATIONAL ENVIRONMENTAL EDUCATION ADVISORY COUNCIL

1. Committee's Official Designation (Title):

National Environmental Education Advisory Council

2. Authority:

This charter renews the National Environmental Education Advisory Council (NEEAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. NEEAC was created by Congress to advise, consult with, and make recommendations to the Administrator of the Environmental Protection Agency (EPA) on matters related to activities, functions and policies of EPA under the National Environmental Education Act (the Act). 20 U.S.C. § 5508(b).

3. Objectives and Scope of Activities:

NEEAC will provide advice, information, and make recommendations on matters related to activities, functions and policies of EPA under the Act.

The major objectives are to provide advice and recommendations on:

a. The biennial report to Congress assessing environmental education in the United States (§ 9(d)(1) of the Act).

b. EPA's solicitation, review, and selection processes for the training and grant programs

c. The merits of individual proposals to operate the § 5 training program and the § 6 grant program, as requested by EPA.

d. Overall implementation of the Act.

4. Description of Committees Duties:

The duties of NEEAC are to provide advice to EPA.

5. Official(s) to Whom the Committee Reports:

The NEEAC will submit advice and recommendations and report to the EPA Administrator through the Office of External Affairs and Environmental Education (OEAEE).

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Environmental Education, within the Office of External Affairs and Environmental Education (OEAEE), under the Office of the Administrator.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of NEEAC is $140, 000 which includes 0.7 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

NEEAC expects to meet approximately one (1) to two (2) times a year, subject to the availability of appropriations. EPA will pay travel and per diem expenses when determined necessary and appropriate. A full-time or permanent part-time employee of EPA will be appointed as the (DFO).

As required by FACA, NEEAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552(b) of Title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the NEEAC.

10. Duration and Termination:

The Act specifically exempts the NEEAC from section 14(a) of the Federal Advisory Committee Act relating to termination 20 U.S.C. § 5508(b)(6). NEEAC, however, will file a new charter every two years.

11. Member Composition:

NEEAC will be composed of eleven (11) members appointed by the EPA Administrator, or designee, after consultation with the Secretary of the U.S. Department of Education. Members will serve as Special Government Employees (SGE), however, the conflict of interest provision at 18 U.S.C. § 208(a) does not apply to members' participation in particular matters which affect the financial interests of their employers. 20 U.S.C. § 5508(b)(2). SGE pay rates will be determined by EPA's Administrator, but may not exceed the daily equivalent of the annual rate for a GS-18 Federal employee.

As required by the Act, the membership of the NEEAC will consist of: two members representing primary and secondary education (including one classroom teacher); two members representing colleges and universities; two members representing not-for-profit organizations involved in environmental education; two members representing State departments of education and natural resources; two members representing business and industry; and one member representing senior Americans. In addition, a representative of the Secretary of Education and a representative of the National Environmental Education and Training Foundation may serve as ex officio members.

12. Subgroups:

EPA, or NEEAC with EPA's approval, may form NEEAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the NEEAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Section 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

October 27, 2010
Agency Approval Date

_____
Date Filed with Congress

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Stephanie
John
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Jim W

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

October 7, 2005

The Honorable Steve Johnson
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Dear Administrator Johnson:

Pursuant to its authority under Rule XXV(k)(1) of the Standing Rules of the Senate, Section 101 of S. Res 445 (108th Congress), and Section 11(e) of S. Res 50 (109th Congress), the Committee on Homeland Security and Governmental Affairs has initiated an investigation into the Nation's preparedness for, and response to, Hurricane Katrina. As you know, the National Response Plan designates specific Emergency Support Functions for your Agency to perform in the case of incidents of national significance. To aid in the Committee's investigation, we request that you provide information (in accordance with the attached definitions and instructions) regarding the Environmental Protection Agency's roles and responsibilities in preparing for and responding to Hurricane Katrina.

Specifically, please:

(1) Describe each of the Agency's roles, responsibilities and authorities in providing emergency support functions under the National Response Plan. With respect to each specific role, responsibility or authority, please identify:

a. The statutory, regulatory or other source for that role, responsibility or authority;

b. The component or components within the Agency involved in acting pursuant to that authority or discharging that role and responsibility;

c. The key personnel involved in acting pursuant to that authority or discharging that role and responsibility;

To the extent that the sources identified in response to subpart (a) are not publicly available, please provide copies of them.

(2) To the extent not provided in response to the previous question, please describe any other roles, responsibilities and authorities of the Agency in preparing for and

responding to a domestic emergency. With respect to each specific role, responsibility or authority, please identify:

a. The statutory, regulatory or other source for that role, responsibility or authority;

b. The component or components within the Agency involved in acting pursuant to that authority or discharging that role and responsibility;

c. The key personnel involved in acting pursuant to that authority or discharging that role and responsibility;

To the extent that the sources identified in response to subpart (a) are not publicly available, please provide copies of them.

(2)

a. Was the Agency asked to act pursuant to its authorities, play any role, or discharge any of its responsibilities specifically in preparation for or response to Katrina? If so, please provide a detailed description of what the Agency was asked to do, by whom it was asked, when it was asked to do it, what specifically it did and when it did it. Please also include the names and titles of key personnel involved in the request or response.

b. To the extent not included in response to subsection (a), please describe any other actions the Agency took pursuant to its authorities, or any other role or responsibilities it assumed specifically in preparation for or response to Katrina. Please be specific as to what the Agency did, when it did it and the names and titles of key personnel involved.

c. To the extent not included in response to subsections (a) and (b), please describe any other actions the Agency considered taking or offered to take pursuant to its authorities, or any other role or responsibilities it considered assuming or offered to assume specifically in preparation for or response to Katrina. Please be specific as to what the Agency considered or offered, when it considered or offered it, why such actions weren't taken or such roles or responsibilities weren't assumed, and the names and titles of key personnel involved.

d. Please describe each instance, if any, in which Agency action was in any way hindered, delayed, limited or not taken because of concern over

whether the Agency had authority to take the action. Indicate key personnel involved and how the issue was resolved.

e. Please describe each instance, if any, in which Agency action was in any way hindered, delayed, limited or not taken because of concern over reimbursement. Indicate key personnel involved and how the issue was resolved.

(3) Please state the time and date the Agency was first informed that the National Response Plan was being activated in response to Hurricane Katrina. Identify who informed the Agency, who received the information and what specific information was conveyed.

(4) Please state the time and date the Agency was first informed that any annex to the National Response Plan was being activated in response to Hurricane Katrina. Identify who informed the Agency, who received the information and what specific information was conveyed.

We request you provide the requested information as it becomes available, but not later than November 3, 2005. We thank you and your staff in advance for your cooperation. If you or your staff have any questions concerning this request, please contact Tom Eldridge of the Committee's majority staff at 202-224-4751 or Jason Yanussi of the Committee's minority staff at 202-224-2627.

Sincerely,

Susan M. Collins
Chairman

Joseph I. Lieberman
Ranking Member

GENERAL INSTRUCTIONS

1. In complying with this request, we ask that you produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. We ask that you produce documents that you have a legal right to obtain, documents that you have a right to copy or have access to, and documents that you have placed in the temporary possession, custody, or control of any third party. Please produce documents on a rolling basis.

2. Please produce each document in a form that renders the documents susceptible to copying.

3. Please produce documents produced in response to this request together with copies of file labels, dividers, or identifying markers with which they were associated when this request was received.

4. Please identify in your response, the person, persons, and/or entity from whom the document or information was or were produced.

5. Please produce documents even if any other person or entity also possesses non-identical or identical copies of the same document.

6. If any of the requested information is available in machine-readable form (such as punch cards, paper or magnetic tapes, drums, disks or core storage), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.

7. If the request cannot be complied with in full, please comply to the extent possible and include an explanation of why full compliance is not possible.

8. In the event that a document is withheld on the basis of a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject manner; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

9. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject, and recipients) and explain circumstances by which the document ceased to be in your possession, custody, or control.

10. If a date set forth in this request referring to a communication, meeting, or other event is inaccurate, but the actual date is known to you or is otherwise apparent from the context

of the request, you should produce all documents which would be responsive as if the date were correct.

11. We ask that you comply as if you are under a continuing obligation to promptly provide additional documents responsive to this request.

12. Please bates stamp each document beginning with a prefix consisting of your agency's acronym or the first three letters of your agency's name. Please produce three sets of documents being produced. Please catalogue responsive documents by request number.

13. When specifying a time, please indicate time zone, e.g. Eastern Standard Time, Central Standard Time, etc.

DEFINITIONS

1. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.

2. The term "casualty" means any person who is declared dead or is missing, ill, or injured.

3. The term "catastrophic incident," as defined by the National Response Plan, means any natural or manmade incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions. A catastrophic incident could result in sustained national impacts over a prolonged period of time; almost immediately exceeds resources normally available to State, local, tribal, and private-sector authorities in the impacted area; and significantly interrupts governmental operations and emergency services to such an extent that national security could be threatened.

4. The term "chain of command," as defined by the National Response Plan, means a series of command, control, executive, or management positions in hierarchical order of authority.

5. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meeting, by telephone, mail, telex, facsimile, computer, discussions, releases, delivery, or otherwise.

6. The term "CERT" refers to Community Emergency Response Teams which are comprised of citizens who received training from an emergency management agency, fire department or police department in disaster preparedness and basic disaster response skills. CERT members are not professional responders but can assist others following an event when professional responders

are not immediately available to help.

7. The term "critical infrastructures," as defined by the National Response Plan, means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

8. The term "disaster recovery center," as defined by the National Response Plan, means a facility established in a centralized location within or near the disaster area at which disaster victims (individuals, families, or businesses) apply for disaster aid.

9. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: agreements; papers; memoranda; reports; studies; reviews; analyses; graphs; diagrams; photographs; charts; tabulations; spreadsheets; presentations; working papers; records; notes; letters; notices; confirmations; telegrams; faxes; telexes; receipts; appraisals; interoffice and intra office communications; electronic mail (e-mail); contracts; cables; notations or logs of any type of conversation, telephone call, meeting or other communication; bulletins; printed matter; computer print-outs; teletype; invoices; transcripts; audio and video recordings, statistical or informational accumulations; data processing cards or worksheets; computer stored and generated documents; computer databases; computer disks and formats; machine readable electronic files or records maintained on a computer; diaries; questionnaires and responses; data sheets; summaries; minutes; bills; accounts; estimates; financial statements; projections; comparisons; messages; correspondence; grant applications; plans; manuals; and similar or related materials. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term. The term "document" and record are synonymous for purposes of this request.

10. The term "emergency", as defined by the Stafford Act, means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

11. The term "Emergency Operations Center," as defined by the National Response Plan, means the physical location at which the coordination of information and resources to support domestic incident management activities normally takes place. An EOC may be a temporary facility or may be located in a more central or permanently established facility, perhaps at a higher level of organization within a jurisdiction. EOC's may be organized by major functional disciplines (e.g. fire, law enforcement, and medical services), by jurisdiction (e.g., Federal, State, regional, county, city, tribal), or by some combination thereof.

12. The term "Emergency Operations Plan," as defined by the National Response Plan, which

may also be referred to as "Emergency Management Plans", means the "steady-state" plan maintained by federal, state, county, and or municipal jurisdictional levels for managing a wide variety of potential hazards.

13. The term "emergency public information," as defined by the National Response Plan, means information that is disseminated primarily in anticipation of an emergency or during an emergency. In addition to providing situational information to the public, it also frequently provides directive actions required to be taken by the general public.

14. The term "evacuation," as defined by the National Response Plan, means an organized, phased, and supervised withdrawal, dispersal, or removal of civilians from dangerous or potentially dangerous areas, and their reception and care in safe areas.

15. The term "federal" means of or pertaining to the Federal Government of the United States of America.

16. The term "federal agency" means any department, independent establishment, government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, the Executive Office of the President, entity within the Executive Office of the President, or military department or entity, but not including the American National Red Cross. This definition includes all components, officials, employees, contractors, employees of contractors and agents of the federal agency.

17. The term "federal personnel" means any person or persons employed by the federal government, including persons employed on a contract basis ("contractors") or those employed by contractors; officers or elected officials of the federal government; persons serving in the United States armed forces including the Coast Guard and the National Guard; and persons serving in law enforcement agencies.

18. The term "Federal Coordinating Officer" (FCO), as defined in the Stafford Act and its accompanying regulations, means the Federal officer who is appointed to manage Federal resource support activities related to Stafford Act disasters and emergencies. The FCO is responsible for coordinating the timely delivery of Federal disaster assistance resources and programs to the affected State and local governments, individual victims, and the private sector.

19. The term "first responder," as defined by the National Response Plan, means local and nongovernmenal police, fire, and emergency personnel who in the early stages of an incident are responsible for the protection and preservation of life, property, evidence, and the environment, including emergency response providers as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101), as well as emergency management, public health, clinical care, public works, and other skilled support personnel (such as equipment operators) who provide immediate support services during prevention, response, and recovery operations. First responders may include personnel from Federal, State, local, tribal, or nongovernmental organizations.

20. The term "functions" includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.

21. The term "Governor's Authorized Representative" (GAR), as defined in the Stafford Act and its accompanying regulations, means the person empowered by the Governor to execute, on behalf of the State, all necessary documents for disaster assistance.

22. The term "hurricane" means an intense tropical weather system of strong thunderstorms with a well-defined surface circulation and maximum sustained winds of 74 mph (64 kt) or higher. Hurricanes are categorized according to the strength of their winds using the Saffir-Simpson Hurricane Scale. A Category 1 storm has the lowest wind speeds, while a Category 5 hurricane has the strongest.

23. The term "identify,"when used with respect to a person, means to identify that person's name, title, and employer and, if relevant, component or division within that employer for which the person works. Please include contact information (including e-mail address) for the person to be identified.

24. The term "incident action plan," as defined by the National Response Plan, means an oral or written plan containing general objectives reflecting the overall strategy for managing an incident. It may include the identification of operational resources and assignments. It may also include attachments that provide direction and important information for management of the incident during one or more operational periods.

25. The term "Incident of National Significance," as defined by the National Response Plan, means, based on criteria established in HSPD-5 (paragraph 4), an actual or potential high-impact event that requires a coordinated and effective response by and appropriate combination of Federal, State, local, tribal, nongovernmental, and/or private-sector entities in order to save lives and minimize damage, and provide the basis for long-term community recovery and mitigation activities.

26. The term "infrastructure," as defined by the National Response Plan, means the manmade physical systems, assets, projects, and structures, publicly and/or privately owned, that are used by or provide benefit to the public. Examples of infrastructure include utilities, bridges, levees, drinking water systems, electrical systems, communications systems, dams, sewage systems, and roads.

27. The term "initial response resources," as defined by the National Response Plan, means disaster support commodities that may be pre-staged, in anticipation of a catastrophic event, at a Federal facility close to a disaster area for immediate application through a National Response Plan Emergency Support Function operation. The initial response resources are provided to victims and all levels of government responders immediately after a disaster occurs. They are

designed to augment State and local capabilities. DHS/EPR/FEMA Logistics Division stores and maintains critically needed initial response commodities for victims and responders and pre-positions supplies and equipment when required. The initial response resources include supplies (baby food, baby formula, blankets, cots, diapers, meals ready-to-eat, plastic sheeting, tents and water) and equipment (emergency generators, industrial ice-makers, mobile kitchen kits, portable potties with service, portable showers, and refrigerated vans).

28. The term "Joint Field Office" (JFO), as defined by the National Response Plan, means a temporary Federal facility established locally pursuant to the National Response Plan to provide a central point for Federal, State, local, and tribal executives with responsibility for incident oversight, direction, and/or assistance to effectively coordinate protection, prevention, preparedness, response, and recovery actions. The JFO will combine the traditional functions of the JOC, the FEMA DFO, and the JIC within a single Federal facility.

29. The term "jurisdiction" means a range or sphere of authority. Public agencies have jurisdiction at an incident related to their legal responsibilities and authorities. Jurisdictional authority at an incident can be political or geographical (e.g., city, county, tribal, State, or Federal boundary lines) or functional (e.g., law enforcement, public health).

30. The term "lessons learned" means any document or process describing and analyzing the conduct of various entities, including government entities, with respect to particular missions, programs, or incidents, for purposes of assessing the actions of such entities and determining whether improvements or changes in such entities' actions or capabilities are needed.

31. The term "levee" means an embankment, natural or artificial, designed to prevent a river or body of water from overflowing.

32. The term "local government" means a county, municipality, city, town, parish, township, local public authority, school district, special district, intrastate district, council of government, regional or interstate government entity or agency or instrumentality of a local government; and Indian tribe or authorized tribal organization; or a rural community, unincorporated town or village, or other public entity.

33. The term "local personnel" means any person or persons employed by a local government, including persons employed on a contract basis ("contractors"); officers or elected officials of the local government; and persons serving in law enforcement agencies.

34. The term "major disaster" as defined by the Stafford Act, means any natural catastrophe (including hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought) or, regardless of cause, any fire, flood, or explosion, in any part of the Untied States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this act to supplement the efforts and available resources of States, local

governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

35. The term "mission assignment," as defined by the National Response Plan, is the means used by DHS/EPR/FEMA to support Federal operations in a Stafford Act major disaster or emergency declaration. It orders immediate, short-term emergency response assistance when an applicable State or local government is overwhelmed by the event and lacks the capability to perform, or contract for, the necessary work.

36. The term "mitigation," as defined by the National Response Plan, means activities designed to reduce or eliminate risks to persons or property or to lessen the actual or potential effects or consequences of an incident. Mitigation measures may be implemented prior to, during, or after an incident. Mitigation measures are often developed in accordance with lessons learned from prior incidents. Mitigation involves ongoing actions to reduce exposure to, probability of, or potential loss from hazards. Measures may include zoning and building codes, floodplain buyouts, and analysis of hazard-related data to determine where it is safe to build or locate temporary facilities. Mitigation can include efforts to educate governments, businesses, and the public on measures they can take to reduce loss and injury.

37. The term "mobilization," as defined by the National Response Plan, means the process and procedures used by all organizations - Federal, state, local, and tribal - for activating, assembling, and transporting all resources that have been requested to respond to or support an incident.

38. The term "mobilization center," as defined by the National Response Plan, means an off-site temporary facility at which response personnel and equipment are received from the Point of Arrival and are pre-positioned for deployment to an incident logistics base, to a local Staging Area, or directly to an incident site, as required. A mobilization center also provides temporary support services, such as food and billeting, for response personnel prior to their assignment, release, or reassignment and serves as a place to out-process following demobilization while awaiting transportation.

39. The term "mutual aid agreement," as defined by the National Response Plan, means an agreement among cities, counties, and/or states to provide assistance to each other during and after a disaster. The agreement outlines policies and procedures for the delivery of such aid.

40. The term "national" means of a nationwide character, including the Federal, State, local, and tribal aspects of governance and policy.

41. The term "National Incident Management System," as defined by the National Response Plan, means the system mandated by HSPD-5 that provides a consistent, nationwide approach for Federal, State, local, and tribal governments; the private sector; and NGOs to work together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. To provide for interoperability and compatibility among Federal, State, local and

tribal capabilities, the NIMS includes a core set of concepts, principles, and terminology.

42. The term "natural resources" means land, fish, wildlife, domesticated animals, plants, biota, and water. Water means salt and fresh water used for drinking, ground water, irrigation, aquaculture and recreational purposes, as well as in its capacity as fish and wildlife habitat, including coral reef ecosystems. Land means soil, surface and subsurface minerals, and other terrestrial features.

43. The term "Nongovernmental Organization" (NGO), as defined by the National Response Plan, means a nonprofit entity that is based on interests of its members, individuals, or institutions and that is not created by a government, but may work cooperatively with government. Such organizations serve a public purpose, not a private benefit.

44. The term "preparedness," as defined by the National Response Plan, means the range of deliberate, critical tasks and activities necessary to build, sustain, and improve the operational capability to prevent, protect against, respond to, and recover from domestic incidents. Preparedness is a continuous process involving efforts at all levels of government and between government and private-sector and nongovernmental organizations to identify threats, determine vulnerabilities, and identify required resources.

45. The term "Principal Federal Official" (PFO), as defined by the National Response Plan, means the Federal official designated by the Secretary of Homeland Security to act as his/her representative locally to oversee, coordinate, and execute the Secretary's incident management responsibilities under HSPD-5 for Incidents of National Significance.

46. The term "private sector," as defined by the National Response Plan, means organizations and entities that are not part of any governmental structure. Includes for-profit and not-for-profit organizations, formal and informal structures, commerce and industry, private emergency response organizations, and private voluntary organizations.

47. The term "Public Assistance Program" means the program administered by FEMA that provides supplemental Federal disaster grant assistance for debris removal and disposal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged publicly owned facilities and the facilities of certain private nonprofit organizations.

48. The term "public health," as defined by the National Response Plan, means protection, safety, improvement, and interconnections of health and disease prevention among people, domestic animals and wildlife.

49. The term "public works," as defined by the National Response Plan, means work, construction, physical facilities, and services provided by governments for the benefit and use of the public.

50. The term "recovery," as defined by the National Response Plan, means the development, coordination, and execution of service- and site-restoration plans for impacted communities and the reconstitution of government operations and services through individual, private-sector, nongovernmental, and public assistance programs that: identify needs and define resources; provide housing and promote restoration; address long-term case and treatment of affected persons; implement additional measures for community restoration; incorporate mitigation measures and techniques, as feasible; evaluate the incident to identify lessons learned; and develop initiatives to mitigate the effects of future incidents.

51. The term "resources" means personnel and major items of equipment, supplies, and facilities available or potentially available for assignment to incident operations and for which status is maintained.

52. The term "response," as defined by the National Response Plan, means activities that address the short-term, direct effects of an incident. Response includes immediate actions to save lives, protect property, and meet basic human needs. Response also includes the execution of emergency operations plans and of incident mitigation activities designed to limit the loss of life, personal injury, property damage, and other unfavorable outcomes.

53. The term "Senior Federal Official" (SFO) means an individual representing a Federal department or agency with primary statutory responsibility for incident management. SFOs utilize existing authorities, expertise, and capabilities to aid in management of the incident working in coordination with other members of the JFO Coordination Group.

54. The term "situation assessment," as defined by the National Response Plan, or the term "situational awareness" means the evaluation and interpretation of information gathered from a variety of sources (including weather information and forecasts, computerized models, GIS data mapping, remote sensing sources, ground surveys, etc.) that, when communicated to emergency managers and decision makers, can provide a basis for incident management decision making.

55. The term "State Coordinating Officer" (SCO) means the person appointed by the Governor to act in cooperation with the Federal Coordinating Officer to administer disaster recovery efforts.

56. The term "state emergency plan" means that State plan which is designated specifically for State-level response to emergencies or major disasters and which sets forth actions to be taken by the State and local governments, including those for implementing Federal disaster assistance.

57. The term "state personnel" means any person or persons employed by the state government, including persons employed on a contract basis ("contractors"); officers or elected officials of the state government; and persons serving in law enforcement agencies.

58. The term "telecommunications" means the transmission, emission, or reception of voice, e-

mail, and/or data through any medium by wire, radio, other electrical electromagnetic, or optical means. Telecommunications include all aspects of transmitting information.

59. The term "vulnerability assessment" means the examination of a system to identify components that may be at risk of compromise, attack, or failure and to determine measures which can be implemented to minimize such risks.

United States Senate
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510
Main Phone: 202-224-4751
Fax: 202-224-9603

TO: Administrator Johnson

OFFICE: EPA

FAX NO: 202-501-1519

FROM: HSGAC

PHONE: (202) 224-4751

DATE: 10.7.05

PAGES (*including this cover sheet*):

NOTE: Letter follows

Environmental Protection Agency Roles and Responsibilities in Preparing for and Responding to Hurricane Katrina

Question (1) Describe each of the Agency's roles, responsibilities and authorities in providing emergency support functions under the National Response Plan.

Response:
Under the National Response Plan, EPA is the Coordinator and Primary Agency, along with the U.S. Coast Guard for Emergency Support Function (ESF) #10-Oil and Hazardous Materials Response. Appropriate response and recovery actions can include but are not limited to efforts to detect, identify, contain, cleanup, or dispose of released oil or hazardous materials; removal of drums, barrels, tanks, or other bulk containers that contain oil or hazardous materials; household hazardous waste collection; permitting and monitoring of debris disposal; water quality monitoring and protection; air quality sampling and monitoring; and protection of natural resources. Additionally, EPA is the sector lead for critical infrastructure protection for the water sector under Homeland Security Presidential Directive-7.

EPA is also a Support Agency for the following Emergency Support Functions:

- ESF #3 - Public Works and Engineering—EPA's role may include infrastructure protection activities for drinking water and waste water facilities; assistance in determining suitability of drinking water sources; locating disposal sites for debris clearance activities; and assessments, technical assistance and monitoring for contaminated debris management.
- ESF #4 - Firefighting—EPA's role may include technical assistance for fires involving hazardous materials and also assistance in identifying uncontaminated water sources for firefighting.
- ESF #5 – Emergency Management—EPA's role may include support to the Joint Field Office, and provision of staff liaisons and technical experts.
- ESF #8 – Public Health and Medical—EPA's role may include technical assistance and environmental information for health/medical aspects of hazardous materials situations; technical assistance regarding drinking water supplies; and assistance identifying water supplies for critical care facilities.
- ESF #11 – Agriculture and Natural Resources—EPA's role may include technical assistance for biological and chemical agents regarding environmental monitoring, contaminated crops/animals, and food/product decontamination.
- ESF #12 – Energy—EPA's role may include response to State/local requests for fuel waivers to address fuel shortages.
- ESF #13 – Public Safety and Security—EPA's role may include assistance through specialized evidence response teams who can work in a contaminated environment; investigation of criminal violations of environmental statutes; and forensic analysis of industrial chemicals.

- ESF #14 – Long-Term Community Recovery—EPA's role may include technical assistance for planning for contaminated debris management and environmental remediation, for example, technical assistance for planning ecological restoration and infrastructure rebuilding.
- ESF #15 – External Affairs—EPA's role may include appropriate support as required.

With respect to each specific role, responsibility or authority, please identify:
a. The statutory, regulatory or other source for that role, responsibility or authority;

Response: In anticipation of or in response to a "major disaster", FEMA activates the National Response Plan (NRP). The NRP "establishes a process and structure for the systematic, coordinated, and effective delivery of Federal assistance to address the consequences of any major disaster or emergency declared under [the Stafford Act]." As directed by the President, federal agencies under Section 402 of the Stafford Act utilize their authorities under federal law in support of state and local assistance efforts and, under Section 403, provide assistance essential to meeting immediate threats to life and property. The following statutory and regulatory authorities can be utilized in connection with the Agency's roles and responsibilities under the National Response Plan.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA - 42 U.S.C. 9601 et seq.) as amended by the Superfund Amendments and Reauthorization Act of 1986, authorizes EPA to respond to releases, or substantial threats of releases of hazardous substances to the environment, and to respond to releases or substantial threats of releases of pollutants or contaminants that may present an imminent and substantial danger to the public health or welfare.

Clean Water Act (CWA - 33 U.S.C. 1251 et seq.,) makes it unlawful for any person to discharge any pollutant from a point source into waters of the U.S., except in compliance with certain specified provisions of the Clean Water Act.

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP - 40 CFR Part 300) implements the authorities provided to EPA and other agencies under CERCLA, the CWA, and Executive Order 1258. It sets forth the process for activating the national response system; specifies responsibilities among the Federal, state, and local governments; and describes resources that are available for response.

b. The component or components within the Agency involved in acting pursuant to that authority or discharging that role and responsibility;

Response:
The Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER) is the National Program Manager for the Agency's preparedness and response activities. Within OSWER, the Office of Emergency Management coordinates with other Headquarters Offices regarding their roles and responsibilities.

Regional Administrators and Waste Management Division Directors are responsible for preparedness and response activities in the EPA Regional Offices.

c. The key personnel involved in acting pursuant to that authority or discharging that role and responsibility;

Response:
On-Scene Coordinators in the EPA Regional Offices take actions necessary to protect public health, welfare and the environment from hazards caused by accidental or intentional releases of oil and hazardous materials. Additionally, EPA has Environmental Response Teams located in Edison New Jersey and Las Vegas, Nevada who provide scientific expertise in areas such as rapid assessment techniques, field analysis and methods, and health and safety protocols. Another Special Team that can provide expertise is the National Decontamination Team located in Cincinnati, OH. Also, other EPA personnel with specific expertise (e.g., water infrastructure, air monitoring, etc.) have been called in to support the response as necessary.

To the extent that the sources identified in response to subpart (a) are not publicly available, please provide copies of them.

Response: All of the documents mentioned are publicly available.

Question (2). To the extent not provided in response to the previous question, please describe any other roles, responsibilities and authorities of the Agency in preparing for and responding to a domestic emergency. With respect to each specific role, responsibility or authority, please identify:

a. The statutory, regulatory, or other source for that role, responsibility or authority;
b. The component or components within the Agency involved in acting pursuant to that authority or discharging that role and responsibility;
c. The key personnel involved in acting pursuant to that authority or discharging that role and responsibility.

Response:

The National Response Plan, under the coordination of FEMA, permits EPA to use all of its available authorities in response to an emergency. In the event of a domestic emergency in which the NRP is not activated, the following authorities would continue to be available.

I. GENERAL RESPONSE AUTHORITIES

The Environmental Protection Agency (EPA) has general response authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Oil Pollution Act (OPA) and Section 311 of the Clean Water Act.

CERCLA authorizes the President to respond to a release or substantial threat of a release of a hazardous substance, or in some cases of a pollutant or contaminant. The President has delegated this authority generally to EPA in the inland zone and to the Coast Guard in the coastal zone. Under Section 104 EPA's response can include, consistent with the National Contingency Plan, removal of hazardous substances, pollutants or contaminants or other response measures EPA deems necessary to protect the public health or welfare or the environment. Section 106 allows EPA to issue such orders as may be necessary to protect public health and welfare and the environment when there is a determination that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance.

The Oil Pollution Act and Section 311 of the Clean Water Act authorize the President to remove a discharge and mitigate or prevent a substantial threat of a discharge of oil and hazardous substance that pose substantial threats to pubic health or welfare. The President has delegated this authority to EPA in the inland zone and to the Coast Guard in the coastal zone.

For EPA, these authorities are implemented by the staff of EPA's Office of Solid Waste and Emergency Response and by each Regional Office.

II. HAZARDOUS AND SOLID WASTE REGULATORY AUTHORITIES

The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), contains a number of statutory authorities relating to solid and hazardous waste that involve preparation for and response to a domestic emergency. Consistent with that authority, EPA has promulgated regulations under RCRA that require persons who generate, transport, store, treat or dispose of hazardous waste to prepare for emergency situations and, if necessary, to take actions to protect human health and the environment as a result of emergency situations.

The relevant RCRA statutory and regulatory provisions are summarized below.

RCRA Section 7003 Imminent and Substantial Endangerment Authority

Section 7003 authorizes EPA to commence a judicial action against any person who has contributed or is contributing to the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste that may present an imminent and substantial endangerment to health or the environment, and obtain a court order to address the potential endangerment. It also authorizes EPA to take other action, including issuing administrative orders,

as may be necessary to protect public health and the environment in situations that may present an imminent and substantial endangerment. This authority is exercised by EPA's Office of Enforcement and Compliance Assurance and by delegated authorities in EPA Regions.

RCRA Section 3013 Monitoring, Analysis, and Testing Authority

Section 3013 authorizes EPA to issue orders requiring monitoring, testing, analysis, and reporting with respect to a facility or site where hazardous waste is or has been stored, treated or disposed of, or there is a release of such waste from the facility or site, and the situation may present a substantial hazard to human health or the environment. These orders may be issued to the owner or operator of the facility or site, and require monitoring, testing, analysis, and reporting as reasonable to ascertain the nature and extent of the hazard. Under some circumstances, EPA may conduct the monitoring, testing, analysis and reporting. This authority is exercised by EPA's Office of Enforcement and Compliance Assurance and by delegated authorities in EPA Regions.

Emergency Response Plans

EPA regulations require facilities that treat, store or dispose of hazardous waste to develop a contingency plan describing the actions facility personnel must take in response to fires, explosions, or any unplanned release of hazardous waste or hazardous waste constituents to air, soil. 40 CFR part 264, Subpart D. Basic parameters for content of the contingency plan are specified at 40 CFR § 264.52. Facilities must also include information relating to planning for emergencies as part of their permit application. See e.g., 40 CFR § 270.14 (b)(11)(iii) and (iv) (planning requirements for facilities located over a fault line or within the 100 year flood plain) and 270.10(j) (owner/operators of landfills or surface impoundments must provide information on the potential for the public to be exposed to hazardous wastes or hazardous constituents from releases from the unit from normal operations and accidents.)

The requirements for interim status facilities are similar. The provisions at 40 CFR Part 265, subpart D, require interim status facilities to develop a contingency plan, describing the actions facility personnel must take in response to fires, explosions, or any unplanned release of hazardous waste or hazardous waste constituents to air, soil. Basic parameters for content of the contingency plan are specified at 40 CFR § 265.52. In addition, EPA regulations establish emergency procedures for interim status facilities at 40 C.F.R. §265.56.

Emergency Permitting for Hazardous Waste

EPA may issue an emergency permit for the treatment, storage or disposal of hazardous waste to address an imminent and substantial endangerment to human health or the environment. 40 C.F.R. § 270.61. The permit may be issued to a non-permitted facility to allow treatment, storage, or disposal of a hazardous waste or to a permitted facility to allow treatment, storage, or disposal of a

hazardous waste not covered by an effective permit. The permit enables the facility to treat, store or dispose of hazardous waste for up to 90 days.

RCRA Subtitle C Generator Requirements

Regulations promulgated under Section 3002 allow generators to accumulate hazardous waste on-site for 90 days or less without a RCRA permit or interim status as long as they comply with certain conditions, including compliance with requirements for owners or operators in Subparts C (Preparedness and Prevention) and D (Contingency Plan and Emergency Procedures) in 40 CFR Part 265 . Section 262.34(d)(4) allows generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month to accumulate hazardous waste on-site for 180 days or less without a RCRA permit or interim status as long as they comply with certain conditions, including compliance with the requirements of Part 265, Subpart C (Preparedness and Prevention).

RCRA Subtitle C Transporter Requirements

Regulations promulgated under Section 3003 require transporters, in the event of a discharge of hazardous waste during transportation, to take appropriate immediate action to protect human health and the environment. Section 263.31 requires transporters to clean up any hazardous waste discharge that occurs during transportation or take action as required by a federal, state or local official.

RCRA Subtitle D Solid Waste Requirements (Open Dumping)

RCRA Subtitle D provides a framework for the management of solid waste that is not hazardous. RCRA §§ 4001 - 4010. RCRA Subtitle D is designed and intended to be largely administered by states. Unlike Subtitle C, EPA does not have the authority to permit facilities that dispose of solid waste that is not hazardous.

Subtitle D does, however, prohibit "open dumping" in violation of EPA's solid waste disposal facility criteria (40 CFR Part 257, Subpart A) and provides for EPA enforcement of municipal solid waste landfill (MSWLF) criteria (40 CFR Part 258) if EPA determines a State MSWLF program to be inadequate under 40 CFR Part 239. In such cases, EPA may exercise the enforcement authorities provided in RCRA Sections 3007 and 3008. EPA may also issue orders under RCRA Section 7003 for solid waste disposal situations that may pose an imminent and substantial endangerment to human health or the environment. These authorities are exercised by EPA's Office of Enforcement and Compliance Assurance and by delegated authorities in EPA Regions.

III. CLEAN AIR ACT

Abatement of an Imminent and Substantial Endangerment

Section 303 of the Clean Air Act (CAA) authorizes EPA to take action when a "pollution source or combination of sources (including moving sources) is presenting" an imminent and substantial endangerment to public health, welfare, or the environment caused by emissions of air pollutants. Under section 303, EPA may seek an injunction against any person who is causing or contributing to the pollution to stop the emissions of the pollutants or to take other action as necessary. Where a civil action would not provide timely relief, EPA may issue administrative orders. Prior to taking any action under section 303, EPA must consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the proposed action is based.

Section 112(r)(9) of the CAA authorizes to EPA to take action when there "may be" an imminent and substantial endangerment because of "an actual or threatened accidental release" of an extremely hazardous substance listed under section 112(r). The Agency can seek relief from a court or, after providing notice to the relevant State, take "other action . . . including, but not limited to, issuing orders as may be necessary to protect public health." However, EPA must first use CAA section 303 authority when that authority is sufficient to protect public health and the environment.

The Administrator has delegated his authority under both of these CAA provisions to the Office of Enforcement and Compliance Assistance and EPA's Regional Offices, with consultation from the Office of Air and Radiation in the case of section 303 and the Office of Solid Waste and Emergency Response in the case of section 112(r)(9).

Monitoring, Analysis and Research

Section 103 of the CAA provides EPA with broad research and information development authority to address and prevent air pollution. Under this section, EPA may undertake research, investigations, experiments, demonstrations, studies and surveys to gain a better understanding of any air pollution problems that might arise from a domestic emergency and to develop effective solutions to such problems. In particular, section 103(c) authorizes EPA to sample, measure, monitor, and analyze air pollutants; the Agency has used this authority in response to several domestic emergencies, including the recent hurricanes. EPA's Office of the Air and Radiation and Office of Research and Development implement the relevant provisions of section 103.

Information on Chemical Facilities

Section 112(r) of the CAA establishes a program for the prevention and mitigation of accidental releases of extremely hazardous substances. As part of that program, facilities handling large quantities of the most dangerous chemicals submit information to EPA concerning the type and amount of the chemicals they have on-site and the potential off-site consequences if those chemicals are accidentally released. EPA and other federal, state and local agencies use this information to prepare for and respond to emergencies.

Emergency Waiver of Permitting, Statutory, or Regulatory Requirements

The Clean Air Act includes several provisions for regulatory relief based on findings of "paramount interest of the United States," national security, "energy emergency," or inadequate fuel supply.

1. General Exemption Authority as to Federal Facilities and Operations

CAA section 118 authorizes the President to exempt any federal emissions source from compliance with any applicable federal, state or local air pollution control requirement, for no more than one year at a time, if he determines it to be "in the paramount interest of the United States to do so ...." There are two exceptions:

- No exemption may be granted from requirements under CAA section 111 (new source performance standards), and
- Any exemption from CAA section 112 (on hazardous air pollutants) must comply with CAA section 112(i)(4), which allows the President to exempt any stationary source from compliance with any section 112 standard or limitation for no more than two years if the President determines that the technology to implement such standard is not available and that "it is in the national security interests of the United States to do so."

These provisions authorize limited extensions of the exemptions and set forth requirements for reporting to Congress on any exemptions.

Beyond that, the President may, if he determines it to be "in the paramount interest of the United States to do so, issue regulations exempting from compliance with [applicable requirements] any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature." The President shall reconsider the need for

such regulations at three-year intervals and must report to Congress on all exemptions granted in the preceding calendar year.

Several EPA offices would be involved in advising the President on the exercise of his authority under section 118, including the Office of Air and Radiation, the Office of Enforcement and Compliance Assistance, and the relevant EPA regional offices.

2. Exemptions for Motor Vehicles, Nonroad Engines, and Fuels

CAA Sections 203(b) and 213: The Administrator may exempt any new motor vehicle or new motor vehicle engine from any of the "prohibited acts" enumerated in CAA section 203(a) (prohibitions primarily against selling nonconforming vehicles and otherwise undermining vehicle emissions requirements), "upon such terms and conditions as he may find necessary for ... reasons of national security." The Act provides similar authority as to nonroad engines. EPA has promulgated regulations implementing these provisions for motor vehicles at 40 CFR 85.1702(2) and 85.1708, and for various categories of nonroad engines, see, e.g., 40 CFR 89.908 and 1068.225 (land-based, diesel nonroad engines).

CAA Section 248(e): The clean-fuel fleet requirements of Part C of Title II of the CAA "shall not apply to vehicles with respect to which the Secretary of Defense has certified to the Administrator that an exemption is needed based on national security consideration."

CAA Section 246(g): The requirement that clean fuels supplied to federal fleets be offered for sale to the public for use in other vehicles is "subject to national security concerns."

CAA Section 211(c): Under this section, EPA has promulgated regulations at 40 CFR 80.606 that provide a national security exemption from the limits on the sulfur content in diesel fuel.

The Administrator would exercise his authority under CAA sections 203(b), 213 and 246(g) and the regulations under section 211(c) with the assistance of the Office of Air and Radiation (OAR) and particularly the Office of Transportation and Air Quality within OAR.

3. Exemption for Production and Use of Stratospheric Ozone Class I Substances

CAA Section 604(f) authorizes the President, to the extent consistent with the Montreal Protocol, to issue such orders regarding production and use of CFC-114 and halons "at any specified site or facility or on any vessel as may be necessary to protect the national security interests of the United

States if the President finds that adequate substitutes are not available and that the production and use of such substance are necessary to protect such national security interest." In exercising the authority under this section, the President would be advised by the Office of Air and Radiation (OAR) and particularly the Office of Atmospheric Programs within OAR.

4. Waiver Authority for Federal Fuels Requirements

Section 1541 of the Energy Policy Act of 2005 amends **CAA section 211(c)(4)(C)**. This new provision authorizes EPA to issue administrative waivers of federal CAA fuel requirements under CAA 211, or of federal enforceability of state fuel requirements in SIPs. The waiver is based upon an EPA determination that extreme and unusual fuel supply circumstances in a state or region of the country prevent distribution of an adequate supply of fuel; the circumstances are the result of Acts of God or other events that could not have been foreseen or prevented by prudent planning; and it is in the public interest to grant such a waiver. DOE must concur in the determination. The waiver is of limited scope and time, tied to the nature of the problem. EPA is required to promulgate implementing regulations within 180 days of enactment. In exercising the authority under this section, the Administrator of EPA would principally be advised by the Office of Enforcement and Compliance Assistance and its Air Enforcement Division and the Office of Air and Radiation and its Office of Transportation and Air Quality.

IIIA. Radon Gas and Indoor Air Quality Research Act

The Radon Gas and Indoor Air Quality Research Act (the Radon Act) authorizes EPA to conduct research and disseminate information concerning the sources and health effects of indoor air pollution and methods for controlling that pollution. Under this statute, the Agency may develop and distribute information useful to addressing indoor air pollution issues that might arise from a domestic emergency. The Radon Act does not confer regulatory authority. The Office of Radiation and Indoor Air within the Office of Air and Radiation implements the Radon Act.

IV. CLEAN WATER ACT

Emergency Provision

The Clean Water Act (CWA), authorizes the Administrator to take action to address emergency situations that present an imminent and substantial endangerment to human health or human welfare. The enforcement authority under section 504 of the CWA is meant to supplement enforcement powers granted under section 309. Section 504 provides:

> "[n]otwithstanding any other provision of this chapter, the Administrator upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial

endangerment to the health of persons or to the welfare of persons where such endangerment is to the livelihood of such persons, such as an inability to market shellfish, may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary."

33 U.S.C. § 1364.

The emergency powers provision of section 504, as well as that for other environmental statutes that EPA implements, is triggered by evidence of an imminent and substantial endangerment. In order to act, there must be evidence that a pollution source or sources are presenting an imminent and substantial endangerment to the health or welfare of persons. Section 504 action is appropriate if EPA receives evidence showing an imminent and substantial endangerment to a person's health or welfare regardless of compliance with a permit or regulation promulgated under the Act. This authority is conferred on the Administrator. The Administrator's authority to seek a temporary restraining order under this provision has been delegated to the Assistant Administrator for Enforcement and Compliance Assurance and the Regional Administrators.

National Pollutant Discharge Elimination System Permitting

Under the Clean Water Act and EPA's implementing regulations, the discharge of pollutants to waters of the United States by point sources is typically regulated by permits issued by States (or in some cases EPA) under the National Pollutant Discharge Elimination System (NPDES) program. See CWA section 402. Both the statute and regulations, however, establish exceptions. Of these exceptions, at least one is applicable here: if discharges are undertaken "in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan)," then no NPDES permit is required for that discharge. 40 C.F.R. § 122.3(d). This permit exclusion, which implements Clean Water Act section 311, is discussed in detail in a Memorandum from Ann R. Klee to Richard E. Green, dated September 7, 2005. The following is a brief summary of that memorandum.

Clean Water Act section 311(c) authorizes the President to "ensure immediate and effective removal" of discharges from motor vehicles, industrial plants, sewer systems and other onshore facilities of oil and hazardous substances that pose substantial threats to public health or welfare. Section 311, which applies to *any* discharges of oil, including those mixed with most other wastes, see 40 C.F.R. § 300.5, requires the removal of oil and hazardous substances to be in accordance with the National Contingency Plan "to the greatest extent possible." Section 311(d)(4). The National Contingency Plan is codified at 40 C.F.R part 300 and is implemented by an On-Scene Coordinator. The On-Scene Coordinator is defined in 40 C.F.R. § 300.5 as "the federal official predesignated by EPA or the [U.S.

Coast Guard] to coordinate and direct responses . . . under the NCP [pursuant to Section 311]." EPA implements Section 311 in inland areas; the U.S. Coast Guard implements Section 311 in coastal areas. EPA has jurisdiction over the New Orleans removal action.

Section 311(d)(4) gives the On-Scene Coordinator the authority to apply the provisions of the National Contingency Plan in a flexible manner and to issue instructions accordingly. When an On-Scene Coordinator is in place and is conducting a Section 311(c) removal action pursuant to the provisions of the National Contingency Plan in 40 C.F.R. part 300, no NPDES permit is required for discharges in compliance with the On-Scene Coordinator's instructions.

Monitoring and Fish Consumption Advisories

Section 104 of the Clean Water Act provides EPA with broad authority to collect and disseminate information to the public concerning water quality and public health. Specifically, section 104(b)(6) authorizes the Administrator to "collect and disseminate" data on "chemical, physical, and biological effects of varying water quality and other information pertaining to pollution and the prevention, reduction, and elimination thereof[.]" 33 U.S.C. § 1254(b)(6). Under this provision, EPA can monitor and collect data on water quality, and can also identify and inform the public of the health effects of reduced water quality. EPA has exercised this authority to issue fish consumption advisories recommending limited intake of fish from certain waterbodies. This authority is exercised by the Office of Water and the Regions.

Section 104(a) authorizes EPA to establish national programs for the prevention, reduction, and elimination of pollution. As part of such programs, EPA shall "conduct and promote" research relating to the causes, effects, extent, prevention, reduction, and elimination of pollutants. 33 U.S.C. § 1254(a)(1). The Clean Water Act further authorizes EPA to conduct "public investigations" concerning the pollution of any navigable waters and to report on the results of such investigations. 33 U.S.C. § 1254(a)(3). In addition, in carrying out the provisions of section 104(a)(1), EPA can collect and make available the results of the activities referred to in that section. 33 U.S.C. § 1254(b)(1).

V. SAFE DRINKING WATER ACT

Imminent and Substantial Endangerment

Section 1431 of the Safe Drinking Water Act (SDWA) includes an imminent and substantial endangerment provision. Section 1431 provides:

> [n]otwithstanding any other provision of this subchapter, the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local

authorities have not acted to protect the health of such persons, may take such action as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment, and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

42 U.S.C. § 300i(a).

This provision would authorize the Agency to take action to address public health emergencies affecting public water supplies and underground sources of drinking water. This authority is exercised by the Administrator and has been delegated to the Assistant Administrator for Enforcement and Compliance Assistance and to the Regional Administrators. See SDWA Delegation 9-17. The authority may be redelegated.

VI. MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA) AUTHORITIES

The Marine Protection, Research, and Sanctuaries Act (MPRSA), 33 USC 1401, *et seq.*, regulates the transportation of material for the purpose of dumping into ocean waters, *i.e.*, waters seaward of the baseline. The MPRSA authorizes the Administrator to issue "various categories of permits" for the transportation of material, other than dredged material, for the purpose of dumping into ocean waters. 33 USC 1412(a), (b). (The Corps of Engineers issues permits for the dumping of dredged material at sea. 33 USC 1413.) EPA's ocean dumping regulations explicitly authorize the Agency to issue emergency permits under certain conditions. 40 CFR 220.3(c). The MPRSA also includes a provision that specifically authorizes EPA to issue emergency permits for the dumping of "industrial waste" (*i.e.*, "waste generated by a manufacturing or processing plant"), which normally may not be dumped into ocean waters. 33 USC 1412a; 1414b(a) and (b).

Emergency Permits

Emergency permits may be issued to dump any of the materials listed in § 227.6 (i.e., organohalogens; mercury and mercury compounds; cadmium and cadmium compounds; oil of any kind or in any form not regulated under the CWA; known or suspected carcinogens, mutagens, or teratogens) in greater than trace amounts where there is demonstrated to exist an emergency requiring the dumping of such

materials, which poses an unacceptable risk relating to human health and admits of no other feasible solution. Before such a permit is issued, the Administrator must consult with the Department of State with respect to the need to consult with parties to the London Convention that are likely to be affected by the dumping. Whether something is present in trace amounts is determined by bioassays (see § 227.6(b) and (c)).

Emergency permits may be issued for other materials (including materials listed in § 227.6 if present only in trace amounts) when the Administrator determines that there exists an emergency requiring the dumping of such materials which poses an unacceptable risk to human health and admits of no other feasible solution. Consultation with the Department of State is not required for such permits.

Under MPRSA section 1412a(a) and (b), EPA may issue emergency permits for the dumping of industrial waste into ocean waters if EPA determines that there has been demonstrated to exist an emergency requiring the dumping of such waste, which poses an unacceptable risk relating to human health and admits of no other feasible solution. "Emergency" refers to situations requiring action with a marked degree of urgency. "Industrial waste" means any solid, semisolid, or liquid waste generated by a manufacturing or processing plant.

Emergency permits may not be issued for materials prohibited by § 227.5 (i.e., high-level radioactive waste; materials produced or used for radiological, chemical or biological warfare; materials insufficiently described by the applicant in terms of their compositions and properties to permit application of the environmental impact criteria of § 227 Subpart B; persistent inert synthetic or natural materials which may float or remain in suspension in such a manner that they may interfere materially with fishing, navigation, or other legitimate uses of the ocean), or for sewage sludge (MPRSA section 1412a (a) and (b)).

As used herein, "emergency" refers to situations requiring action with a marked degree of urgency, but is not limited in its application to circumstances requiring immediate action.

There is also a provision allowing emergency ocean dumping *without* a permit when it is to safeguard life at sea. 40 CFR 220.1(c)(4).

The authority to issue emergency permits has been delegated to the Assistant Administrator for Water and the Regional Administrators, with the following limitations: 1. The Assistant Administrator for Water has authority for permitting where ocean dumping will occur at a site to be used by more than one Region and where the Regional Administrator determines that the Region has insufficient technical expertise to assess the permit request. 2. Regional Administrators are required to notify the Assistant Administrator for Water prior to issuance of a permit.

VII. TOXIC SUBSTANCES CONTROL ACT (TSCA)

Polychlorinated Biphenyl (PCB) Remediation Waste Management

Certain flexibilities apply in emergency situations to the management of PCB remediation waste. PCB remediation waste is waste containing PCBs as a result of a spill, release, or other unauthorized disposal, with certain limitations. 40 CFR § 761.3. In particular, the regulations governing disposal of PCB remediation waste provide that such regulations "do[] not prohibit any person from implementing temporary emergency measures to prevent, treat, or contain further releases or mitigate migration to the environment of PCBs or PCB remediation waste." 40 CFR § 761.61.

In addition, EPA has a codified enforcement policy that facilitates rapid response to recent spills of PCBs, such as those that might occur from electrical equipment that is damaged during emergencies. 40 CFR Part 761, Subpart G. Among other things, the policy contains notification and cleanup procedures for recent PCB spills, establishes PCB cleanup levels, and provides for documentation of actions taken pursuant to the policy. 40 CFR § 761.125. The policy provides flexibility with respect to certain of its provisions, such as the timing for completion of a spill cleanup, in the event of civil emergency, adverse weather conditions, and lack of access to a spill site, among other things. Id.

Other TSCA Provisions

TSCA section 22 provides for a national defense waiver for any TSCA requirements, which shall be issued by the Administrator upon a request and determination by the President that the waiver is in the interest of national defense.

TSCA section 7 allows the Assistant Administrator for the Office of Enforcement and Compliance Assurance and Regional Administrators to commence a civil court action to seize an imminently hazardous chemical substance or against a person who manufactures, processes, distributes in commerce, uses or disposes of an imminently hazardous chemical substance, and authorizes the court to grant relief as necessary to protect against unreasonable risks to health or the environment.

EPA might be able to defer application of otherwise applicable TSCA requirements under section 9(b) in emergency situations if the Administrator determines that action taken under another EPA authority to address a risk to health or the environment associated with a chemical substance or mixture eliminates or sufficiently reduces the risk. Similarly, with respect to PCBs, TSCA section 6(e)(5) may allow EPA to defer application of PCB-specific requirements during emergencies. Section 6(e)(5) states that "[the PCB subsection] does not limit the authority of the Administrator, under any other provision of this chapter or any other Federal law, to take action respecting any polychlorinated biphenyl."

EPA has used this provision, in conjunction with a RCRA section 7003 imminent hazard order, to allow the management of PCBs that would otherwise have been prohibited under TSCA and its implementing regulations.

VIII. PESTICIDE USE EMERGENCY EXEMPTIONS

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) generally prohibits the sale and distribution of pesticides unless they have been registered by EPA, and generally prohibits the use of a registered pesticide in a manner inconsistent with its labeling. However, section 18 of FIFRA authorizes EPA to exempt a state or federal agency from the provisions of FIFRA if EPA determines that emergency pest conditions exist.

There are two main processes for emergency exemptions: specific, quarantine and public health exemptions issued by EPA, and crisis exemptions issued by a state or federal agency subject to EPA acquiescence.

For a specific, quarantine or public health exemption, a state (typically a state department of agriculture) or federal agency (most commonly USDA's Animal Plant Health Inspection Service, USDI, FDA, and EPA itself) applies to EPA for a section 18 emergency exemption for a particular pesticide. EPA performs an expedited review of the information it has, and must determine whether an emergency exists and whether the use of the unregistered pesticide as proposed will result in unreasonable adverse effects on the environment (a risk/benefit finding). If the proposed emergency use would result in residues in food or feed, EPA must also determine whether it can issue an expedited time-limited tolerance (to allow food containing pesticide residues to be sold in commerce) under section 408 of the Federal Food, Drug, and Cosmetic Act. Specific, quarantine, and public health exemptions are ordinarily issued by the Director of the Registration Division, Office of Pesticide Programs, Office of Pollution Prevention and Toxics. In certain cases (e.g., first use of a chemical, repeat requests where similar emergency exemptions have been granted for many years), the exemptions may be issued by the Director of the Office of Pesticide Programs, Office of Pollution Prevention and Toxics.

If there is not sufficient time to request a specific quarantine or public health exemption, a state or federal agency may issue a crisis exemption which allows the emergency use for 15 days. The state or federal agency notifies EPA of this action prior to issuing the crisis exemption, and EPA performs an abbreviated review of the proposed use. EPA may stop a crisis exemption by notifying the state or federal agency not to issue the crisis exemption. Authority to deny a crisis exemption is exercised by the Director of the Office of Pesticide Programs, Office of Pollution Prevention and Toxics. In an emergency arising from a suspected bioterrorism incident, crisis exemptions may be issued by the Assistant Administrator and Deputy Assistant Administrator for the Office of Solid Waste and Emergency Response.

IX. APPROPRIATIONS AND CONTRACTS

Appropriations Authority

31 USC § 1342 states that an employee of the US Government "may not accept voluntary services . . .or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. . .[which do] not include ongoing, regular functions of government...." For EPA, the authority to accept emergency voluntary services is exercised by the Assistant Administrator for OSWER under EPA Delegation 1-56, and the authority to procure personal services is exercised under EPA Delegation 1-2 by the Agency's Contracting Officers.

Procurement Authority

1. 41 USC 253(c)(2) of the Competition in Contracting Act (CICA)

This provision allows Government agencies to suspend competition when procuring supplies or services during time of "unusual and compelling urgency." The Agency must prepare a "justification and approval"(at EPA, a Justification for Other than Full and Open Competition, or JOFOC) for its own files demonstrating that any delay in award of a contract would result in serious injury, financial or other, to the Government. Section 253(c)(2) can be used alone or in conjunction with other statutory provisions that provide for responses in emergency situations such as CERCLA section 104 (h), below. For EPA, the authority to approve a JOFOC is exercised by an official one level above a Contracting Officer for procurements below $500,000; for procurements over $500,000 the Competition Advocate of the Office of Acquisition Management (OAM); and for procurements over ten million dollars a JOFOC must be approved by the Director of OAM. (OAM Acquisition Handbook, section 4.)

2. CERCLA Section 104(h)"Emergency procurement powers; exercise by President"

This provides that the President may authorize the use of such emergency procurement powers necessary to effect the purpose of CERCLA. Section 2(k) of Executive Order 12580 delegates 104(h) "to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Section. The exercise of authority by the EPA Administrator under Section 104(h) of the Act must be approved by the Administrator of the Office of Federal Procurement Policy. Using CERCLA 104 (h), a Justification for Other than Full and Open Competition (JOFOC) citing FAR § 6.302-5 "Authorized or required by statute" would be required, since compliance with CICA is still necessary. The authority would be exercised as provided in the OAM Acquisition Handbook. (See above.)

Question (2)

a. Was the Agency asked to act pursuant to its authorities, play any role, or discharge any of its responsibilities specifically in preparation for or response to Katrina? If so, please provide a detailed description of what the Agency did, when it did it and the names and titles of key personnel involved.

Response

The Agency was asked to perform several functions in preparation for and in response to Hurricane Katrina, all of which were defined under specific Mission Assignments issued by FEMA. Following is an overview of the roles and responsibilities of EPA during the response (Actual activities vary in some instances due to the requests/capacity of State and local governments. Specific information regarding mission assignments is included below.)

- Pre-deployment and continuing deployment for the length of activation of the National Regional Response Coordination Center (NRCC), Regional Response Operations Centers(RRCC) and State Emergency Operations Centers and the Interagency Incident Management Group (IIMG) at Department of Homeland Security.
- Reconnaissance activities to determine the locations of potential releases and extent of damage.
- Search and rescue operations in Louisiana resulting in the rescue of approximately 800 evacuees by EPA and contractor staff.
- Security assistance by EPA's National Criminal Enforcement Response Team for the search and rescue operations in Louisiana.
- Assessment of potential releases from chemical and oil facilities in the potentially affected areas.
- Response to chemical and oil releases in coordination with USCG.
- Assessment/assistance to local drinking water and waste water facilities to restore operations.
- Participation in FEMA led assessment teams in Mississippi regarding restoration of water utilities.
- Sampling of floodwater and sediment in New Orleans; to date over 700 samples were taken, results analyzed, data validated, interpreted and communicated, including posting on EPA website.
- Screening of air using Airborne Spectral Imagery of Environmental Contaminants Technology (ASPECT) to locate chemical spills that may need emergency response; and also real-time air monitoring mobile laboratories known as TAGA (Trace Atmospheric Gas Analyzer) buses.
- Real-time air monitoring and sampling near debris burning sites; establishment of longer term air monitoring sites.
- Removal of orphaned drums and other large containers and household hazardous waste collection. Over 1 million pounds of hazardous waste has been collected in New Orleans alone (over 350, 000 containers). The total for collection of large and small hazardous containers in the affected areas exceeds 500,000 containers.
- Separation and collection of white goods.
- Monitoring of debris removal activities.
- Surface water sampling in the coastal waters and the Mississippi.
- Community outreach regarding household hazardous waste collection and sampling results.

- Various advisories regarding environmental and health hazards, in coordination with the Centers for Disease Control and Prevention.
- Issuance of fuel waivers
- Analysis of options and consultation with U.S. Army Corps of Engineers (USACE) regarding reduction of pollutants in floodwater and storm water.
- Preparation of guidance materials and advice including demolition and PCBs, mold and mildew, rodent control, effective spraying of pesticides for mosquito control, special disinfectant pesticides for decontamination of emergency vehicles.
- Support and assistance to USACE and the States regarding debris management issues, including waste incinerations processes.
- Co-chair of the Deputy level Environmental Impacts and Clean-up Work Group.

All of the field work done by EPA, the US Coast Guard and environmental contractors is accomplished under Technical Assistance and the Direct Federal Assistance Mission Assignments. This field work is continuing as of this date and is expected to continue well into 2006. The operations are managed under the National Incident Management System (NIMS) structure. At the Regional level, both the FEMA Regional Response Coordination Centers and the EPA Area Commands are organized under the NIMS system. In the field, Incident Management Teams (IMTs) using a Unified Command structure comprised of EPA, US Coast Guard, and the States of Alabama and Mississippi in Region 4 and with the State of Louisiana in Region 6 manage the field operations. Efforts continue throughout southern Alabama, Mississippi and Louisiana at numerous locations.

Key personnel involved in carrying out these roles and responsibilities included the Administrator, the Deputy Administrator, Regional Administrators for EPA Regions 4 and 6 as well as Assistant Administrators for the Office of Solid Waste and Emergency Response, the Office of Water, the Office of Pesticides and Toxic Substances and the Office of Research and Development.

Mission Assignments:
For EPA Region 4 (covering Florida, Alabama and Mississippi), EPA Region 6 (covering Louisiana) and EPA Headquarters, following is the listing of mission assignments provided by the Federal Emergency Management Agency (FEMA) detailing the roles EPA was requested to conduct in preparation for and response to Hurricane Katrina.

Region 4 EPA Atlanta

1. MA 7220-SU-FL-EPA-09

EPA received an Activation letter from FEMA Region 4 which tasked EPA under Mission Assignment Number 7220-SU-FL-EPA to provide assistance as directed to the Regional Response Coordination Center (RRCC) and the Emergency Response Team – Advanced (ERT-A) for the State of Florida. The start date was 08/26/2005. An On-

Scene Coordinator (OSC) from the EPA Region 4 Emergency Response and Removal Branch (ERRB) was deployed to the Florida State Emergency Operations Center (FLEOC) as the Emergency Support Function number 10 (ESF-10) representative on the ERT-A.

2. MA 1602-DR-FL-EPA-01

Following the Presidential Declaration, FEMA issued MA 1602-DR-FL-EPA-01 for the same support operations. Because of the hurricane's minimal impact on Florida, the OSC was demobilized on August 29, 2005.

3. MA 7220-SU-AL-EPA-01

ESF-10 was activated on 08/25/2005 to support Tropical Storm Katrina in response operations in Alabama. EPA support was requested for response operations in the FEMA Region 4 RRCC, ERT-A and the Joint Field Office (JFO) and other duty stations as assigned by FEMA. Two EPA OSCs were deployed to the Alabama EOC on 08/27/2005. These individuals coordinated oil and hazardous materials assessments and responses with FEMA, the Alabama Department of Environmental Management, the Alabama Emergency Management Agency, and also with the EPA Area Command operating from the EPA Regional Response Center in Atlanta, GA.

4. MA 1605DR-AL-EPA-01

Following the Presidential Disaster Declaration on August 29, 2005, FEMA issued a follow-up MA 1605-DR-AL-EPA-01 with a start date of 08/29/2005. The scope of the coordination operations remains the same.

5. MA 7220SU-MS-EPA-02

EPA received an Activation letter from FEMA Region 4 which tasked EPA under Mission Assignment Number 7220-SU-MS-EPA to provide assistance as directed to the Regional Response Coordination Center (RRCC) and the Emergency Support Team – Advanced (ERT-A) for the State of Mississippi. The start date was 08/28/2005. This mission assignment was closed and released in full with no charges. All ESF-10 staffing of the FEMA Region 4 RRCC and MS JFO are charged to MA 1604DR-MS-EPA-01.

6. MA 3213EM-MS-EPA-01

Emergency order signed on 8/28/05 to activate ESF-10 support at the FEMA Region 4 RRCC and MS JFO has been completed. (Pre-declaration)

7. MA 1604DR-MS-EPA-01

ESF-10 was activated on 08/29/2005 to support the functions of the FEMA Region 4 RRCC in response to Hurricane Katrina for the State of Mississippi. An On-Scene

Coordinator (OSC) from the EPA Region 4 Emergency Response and Removal Branch (ERRB) was deployed to the Mississippi State Emergency Operations Center (MSEOC) as the Emergency Support Function number 10 (ESF-10) representative on the ERT-A. EPA Region 4 staffed the ESF-10 activities at the FEMA Region 4 RRCC through 9/29/05. An OSC remains at the ESF-10 desk in Mississippi JFO along with technical assistants from START and the US Coast Guard (USCG).

8. MA 1604DR-MS-EPA-02

ESF-10 was requested on 8/30/05 to provide technical assistance to the State of Mississippi to locate and assess actual and potential threats presented by hazardous materials, pollutants, contaminants, and oil (EPA and USCG). Initial assessments in the lower three affected counties in Mississippi (Hancock, Jackson, and Harrison) have been completed. USCG assessments of the affected coastal areas have been completed. Secondary assessments continue, as needed, in highly impacted areas as debris removal progresses.

9. MA 1604D4R-MS-EPA-04

ESF-10 was requested on 8/30/05 to conduct field operations for recovery, removal, and disposal of actual and potential oil discharges, releases of hazardous materials, pollutants, and contaminants to include household hazardous waste debris. In addition, take appropriate actions to prevent potential releases and minimize environmental damage. The on-going activities under this Mission Assignment include the removal of hazmat/pollutant/contaminant and oil from three counties, removal of hazmat before and after USACG COE debris contractors, removal of household hazmat before and after COE private property debris contractors, and collection of hazardous waste. EPA conducted sampling of various media to determine that all hazmat was recovered or removed. All sampling has been completed and analytical results will be delivered and evaluated by 11/15/2005. USCG is conducting pollution removal abatement on approximately 300 vessels in Mississippi.

10. MA 1604DR-MS-EPA-07

ESF-10 was requested on 9/17/05 to use internal or contractor assets to monitor burn sites as requested by the state. Monitoring is being performed in accordance with all applicable EPA ambient air monitoring/sampling guidelines.

11. MA 1604DR-MS-EPA-08

ESF-10 was requested on 9/16/05 to obtain, set-up, and operate four (4) Air Curtain Destructors needed for disposal of rotting, decaying putrescible type wastes which pose a threat to human health and the environment. To date, all putrescible wastes have been disposed of in municipal landfills and use of air curtain incinerators has not been warranted.

12. MA 1604DR-MS-EPA-09

FEMA requested ESF-10 to provide technical assistance with Public Assistance activities involving drinking waste, wastewater, and stormwater infrastructure needs. Tasks include assessments, filling out worksheets, interviewing, and consulting with public entities. EPA Region 4 is providing environmental scientists and engineers from the appropriate programs to assist the state and local communities.

13. MA 1604DR-MS-COE-MVD-22 / IAG# RW-96945999401

USACE requested ESF-10 on 9/13/05 to provide contractors and project oversight to complete 28 Task Orders addressing temporary repairs to wastewater treatment systems along the coast. EPA is providing contractors and oversight to complete these Task Orders.

The US Army Corps of Engineers asked EPA to provide technical assistance and contractor oversight to repair and replace wastewater lift stations throughout the coastal Mississippi counties that had been damaged or destroyed by Hurricane Katrina. That effort is still underway.

EPA Region 6 Dallas

1. MA 7720SU-LA-EPA-04

EPA Region 6 received verbal communication for activation under the National Response Plan on the morning of August 26. The verbal communication was to notify EPA that a formal activation letter was forthcoming and requested that EPA Regional personnel be present in the FEMA Regional Response Coordination Center (RRCC) in Denton, Texas on the afternoon of August 27. On August 27, EPA Region 6 received received the formal activation letter from FEMA regarding the provision of assistance to hurricane impacted areas. An On-Scene Coordinator (OSC) went to the RRCC in the early afternoon. FEMA gave EPA R6 verbal notification requesting that an EPA person mobilize to Baton Rouge to pre-stage for Rapid Needs Assessment (RNA) Team and report to the FEMA officials at the Louisiana EOC at 6:00 pm CST. On Sunday, August 28, FEMA signed a Mission Assignment (7220SU-LA-EPA-04) formalizing the EPA activation in providing support to FEMA Region 6 RRCC, ERT-A Teams, RNA Teams, and other teams.

2. MA 1603DRLA-EPA-01

A second mission assignment for post-declaration activation activities was issued on August 28. Also, EPA R6 staffed its Regional Response Center (RRC) to begin support of anticipated field activities. EPA began 24-hour staffing at the RRCC.

3. MA 1603DR-LA-EPA-03

On August 29, the State of Louisiana signed an Action Request Form and submitted it to FEMA asking for field operations for activity and disposal of oil and hazardous materials as requested by the State in response to Hurricane Katrina under ESF-10. This request was processed into a Mission Assignment (1603-DR-LA-EPA-03) for critical air, ground, and water transportaion, signed by FEMA on September 1.

4. MA 1603DR-LA-02

On August 31, due to declining condition of the levee, FEMA requested that all ESFs that could possibly do so, begin assisting in the Search and Rescue (SAR) efforts in the New Orleans area. Therefore, the R6 OSC was redirected to conduct SAR efforts at the direction of FEMA and several contractors were issued 'Notices to Proceed' for boats and operators. EPA rescued approximately 800 evacuees.

5. MA 1603DR-LA-EPA-04

The State of Louisiana signed an Action Request Form and submitted it to FEMA asking for technical assistance for the State of Louisiana (i.e., water / wastewater treatment assessments, assessment of oil / hazardous substances releases). This request was turned into a Mission Assignment (1603DR-LA-EPA-04), signed by FEMA on September 1. An OSC was tasked to mobilize to New Orleans the following day to begin reconnaissance activities for oil and hazardous materials. On, August 30, EPA R6 began assisting FEMA with the RNA and the Airborne Spectral Photometric Environmental Collection Technology (ASPECT) aircraft began flyover of the impacted area.

EPA Headquarters Washington DC

1. MA 1604DR-MS-EPA-10

On August 26, EPA Headquarters Emergency Operation Center received notification from the FEMA National Response Coordination Center (NRCC) that ESF#10 was being activated in anticipation of Hurricane Katrina making landfall. EPA began staffing the ESF#10 Desk in coordination with the U.S. Coast Guard on August 27. On 8/27/05 a mission assignment to perform ES F-10 functions at the national level was provided by FEMA. This is for support of the National Emergency Response Team (ERT-N) and the National Response Coordination Center (NRCC) and support to ESF-5 Emergency Management. This MA is for Administrative costs to include overtime and travel expenses.

2. MA 1603DR-LA-EPA

This activation directly supports the mission of ESF-#14 –Long Term Community Recovery and EPA's role in assessing long term environmental impacts of Katrina contamination to water, soils, structures, and other natural resources.

3. MA 1604DR-MS-EPA-06

EPA was requested on September 10 to activate and deploy EPA employees to cover an abundance of calls from Hurricane Katrina Victims at the Chicago Call Center. On September 12, FEMA issued a mission assignment to cover overtime and holiday pay only. 45 employees have been deployed in support of this mission.

4. MA 1604DR-MS-EPA-05

On September 12, FEMA issued a mission assignment related to their request for Federal employees willing to deploy ASAP for a two-week minimum field assignment to serve in a variety of functions in response to Hurricane Katrina. The mission assignment covered administrative costs including overtime, travel and per diem. As of October 31, 2005, 38 EPA employees were deployed in response to this mission assignment and the deployments are continuing.

b. To the extent not included in response to subsection (a), please describe any other actions the Agency took pursuant to its authorities, or any other role or responsibilities it assumed specifically in preparation for or response to Katrina. Please be specific as to what the Agency did, when it did it and the names and titles of key personnel involved.

Response:

1. Coastal Water Sampling. The environmental impacts from Hurricane Katrina are being quantified in part through comprehensive water and sediment quality sampling efforts and data sharing agreements among states and federal agency partners. Specifically, EPA's Office of Research and Development, Gulf Ecology Division, in Gulf Breeze, FL; EPA's Office of Water and the EPA Ocean Survey Vessel Bold; and EPA Region 4's Science and Ecosystem Support Division have been working in conjunction with the National Oceanographic and Atmospheric Administration (NOAA), the U.S. Food and Drug Administration (FDA), the U.S. Geological Survey (USGS), and the States of Louisiana, Mississippi, and Alabama.

Authority to perform sampling activities is provided under Clean Water Act section 104 and other sections of the statute. EPA also used the authorities of Clean Water Act section 104 to perform laboratory analysis of the water quality and sediment samples and to inform the public of the results.

This interagency effort was designed to assess coastal ecosystems, biological conditions, fisheries, water quality, and human health risks in coastal ecosystems. The federal/state interagency assessment builds on and enhances the state of Louisiana's on-going hurricane assessment efforts and provides Louisiana, the federal agencies, and other impacted states with the scientific data necessary to make sound decisions on a number of environmental issues.

2. Assessment of NPL Sites in the Path of the Hurricane. An assessment of sites that were in the path of the hurricane has been completed and confirmatory sampling has also been conducted. The Agency is in the process of validating and interpreting the results and will post that information when the process is complete.

c. To the extent not included in response to subsections (a) and (b), please describe any other actions the Agency considered taking or offered to take pursuant to its authorities, or any other role or responsibilities it considered assuming or offered to assume specifically in preparation for or response to Katrina. Please be specific as to what the Agency considered or offered, when it considered or offered it, why such actions weren't taken or such roles or responsibilities weren't assumed, and the names and titles of key personnel involved.

Response: All of the actions taken in preparation for and response to Katrina are included in the response to subsection (a) and (b).

d. Please describe each instance, if any, in which Agency action was in any way hindered, delayed, limited or not taken because of concern, over whether the Agency had authority to take the action. Indicate key personnel involved and how the issue was resolved.

Response: EPA was not prevented from taking Agency action because of concern over whether the Agency had the authority to take any action. During the course of the response, however, EPA is identifying situations where additional legal authority would help facilitate more timely response to domestic emergencies. For example, additional authority could help EPA work with our State and local partners to address disposal of debris, issuance of discharge permits for contaminants contained in flood waters, and the sharing of important information related to various chemical products with state and local authorities.

e. Please describe each instance, if any, in which Agency action was in any way hindered, delayed, limited or not taken because of concern over reimbursement. Indicate key personnel involved, and how the issue was resolved.

Response: EPA was not hindered, delayed, or limited, or prevented from taking action because of concern over reimbursement.

Question (3). Please state the time and date the Agency was first informed that the National Response Plan was being activated in response to Hurricane Katrina. Identify who informed the Agency, who received the information and what specific information was conveyed.

Response:

EPA Region 4 was informed by the Region 4 FEMA Response Operations Branch that the Regional Response Coordination Center (RRCC) located in Thomasville, GA had activated at a Level 3 (monitoring status). This notification was e-mailed to all the ESF Primary Federal Agencies at 1400 EDT August 24, 2005. This status briefing provided the status of the Region 4 States of Alabama, Florida, and Mississippi. It also described the action the RRCC had taken.

EPA received verbal notification for activation under the National Response Plan on the morning of August 26. The verbal notification indicated that a formal activation would be forthcoming and requested that EPA personnel be present in FEMA's Regional Response Coordination Center on August 27. The Region received the letter from FEMA on August 27, 2005.

Question (4). Please state the time and date the Agency was first informed that any annex to the National Response Plan was being activated in response to Hurricane Katrina. Identify who informed the Agency, who received the information and what specific information was conveyed.

While some of the ESFs annexes were activated by the August 24, 2005 communication, notification to the EPA Region 4 ESF-10 RRCC Team Chief that ESF-10 would be activated at 1200 EDT on August 26, 2005 was received from the RRCC Operations Section Chief at 1930 hours on August 25, 2005.

On August 26, EPA Headquarters EOC received notification from the FEMA NRCC that ESF#10 was being activated in anticipation of Hurricane Katrina making land fall.

EPA Region 6 was notified in a letter from FEMA dated August 27, 2005 that the ESF-10 Annex was being activated.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-12-000-4401

MAR - 9 2012

THE ADMINISTRATOR

The Honorable Susan Collins
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator Collins:

I am pleased to renew the charter of the Environmental Financial Advisory Board in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Environmental Financial Advisory Board is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The board will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Clara Jones in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3701.

Sincerely,

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

ENVIRONMENTAL FINANCIAL ADVISORY BOARD

1. Committee's Official Designation (Title):

Environmental Financial Advisory Board

2. Authority:

This charter renews the Environmental Financial Advisory Board (EFAB) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 and relevant Agency policies. The EFAB is in the public interest and supports EPA in performing its duties and responsibilities.

3. Objectives and Scope of Activities:

There are many critical environmental financing issues facing our nation. Environmental legislation places significant additional resource requirements on all levels of government, increasing their infrastructure and administrative costs. At the same time, limited budgets and economic challenges have constrained traditional sources of capital. Growing needs and expectations for environmental protection, as well as increasing demands in all municipal service areas, make it difficult for state and local governments to find the resources to meet their needs. The resulting strain on the public sector challenges the quality and delivery of environmental services.

The major objectives are to provide policy advice and recommendations on:

a. Reducing the cost of financing sustainable environmental facilities, discouraging polluting behavior, and encouraging stewardship of natural resources;

b. Creating incentives to increase private investment in the provision of environmental services and removing or reducing constraints on private involvement imposed by current regulations;

c. Developing new and innovative environmental financing approaches and supporting and encouraging the use of cost-effective existing approaches;

d. Identifying approaches specifically targeted to small community financing;

e. Assessing government strategies for implementing public-private partnerships, including privatization and operations and maintenance issues, and other alternative financing mechanisms;

f. Improving governmental principles of accounting and disclosure standards to help improve sustainability of environmental programs;

g. Increasing the capacity issue of state and local governments to carry out their respective environmental programs under current Federal tax laws;

h. Increasing the total investment in environmental protection and stewardship of public and private environmental resources to help ease the environmental financing challenge facing our nation; and

i. Removing barriers and increasing opportunities for the U.S. financial services and environmental goods and services industries in other nations.

4. Description of Committee's Duties:

The duties of the EFAB are solely to provide advice to EPA.

5. Official(s) to Whom the Committee Reports:

The EFAB will submit advice and recommendations and report to the EPA Administrator, through the Office of the Chief Financial Officer.

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of the Chief Financial Officer.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the EFAB is $559,000 which includes 4.5 work years of support.

8. **Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. **Estimated Number and Frequency of Meetings:**

EFAB expects to meet approximately two (2) times a year. Meetings may occur approximately once every six (6) months or as needed and approved by the Designated Federal Officer (DFO). EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the EFAB will hold open meetings unless the Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of section 552b of title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the EFAB.

10. **Duration and Termination:**

EFAB will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After the initial two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. **Member Composition:**

The EFAB will be composed of approximately thirty (30) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Members are selected to represent the points of view held by specific organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from all levels of government, including elected officials; the finance, banking, and legal communities; business and industry; and local, national and non governmental organizations.

12. **Subgroups:**

EPA, or the EFAB with EPA's approval, may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the EFAB for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. **Recordkeeping:**

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

February 24, 2012
Agency Approval Date

March 6, 2012
GSA Consultation Date

MAR - 9 2012
Date Filed with Congress

AL-12-001-9810

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

November 30, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

We are asking you to immediately clarify and, if necessary, provide additional guidance regarding the applicability and extent of the Environmental Protection Agency's (EPA) "Lead: Renovation, Repair and Painting Rule" (LRRP) for the recovery from Hurricane Sandy.

As you know, Sandy has affected many, many lives, and while we have no estimates for individual property damages yet, disaster and emergency declarations are currently in place for more than 260 counties in North Carolina, Virginia, West Virginia, Maryland, the District of Columbia, Pennsylvania, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, and New Hampshire.

Previously, EPA Region 4 issued guidance on May 14, 2010, following the devastating flooding in Tennessee on May 1-2, 2010, and has issued a September 2011 fact sheet (EPA-740-F-11-01) on emergency renovations. As EPA has stated in these documents, emergency renovations are exempted from the following LRRP requirements: information distribution, posting of warning signs at the renovation site, containment of dust, and waste handling requirements. Certified firms performing emergency renovations are not exempt from the cleaning, cleaning verification, and recordkeeping requirements. Additionally, these exemptions only apply to the renovations that are immediately necessary to protect personal property and public health, but do not apply to the work being done to put homes back together following the emergency portions of the renovation.

We have always believed that the LRRP rule provides important health protections, and we remain completely supportive of ensuring that children and pregnant women are protected from preventable lead dust exposure. We want emergency recovery work done on target housing with target populations in the wake of Sandy to be performed by firms and contractors who are certified and compliant with LRRP work practices.

We believe that the current guidance is uncertain and may unintentionally dissuade LRRP firms from working in pre-1978 homes and may potentially slow the recovery for those families. During an emergency renovation, questions and confusion about when normal LRRP provisions apply and uncertainty regarding liability from recordkeeping errors may unintentionally deter LRRP contractors from performing work on pre-1978 homes. Additionally, because LRRP only applies to firms that receive compensation for work, and not volunteers or homeowners performing their own

repairs, we are concerned that confusion regarding how EPA will enforce LRRP following Sandy could result in non-LRRP certified individuals doing more work in pre-1978 homes.

Given the significant amount of renovation and repair to target housing and child occupied facilities that will be necessary to recover from Sandy, and that we are fast approaching the coldest months of the year, we request that you immediately provide clarity regarding how EPA will apply and enforce LRRP for this emergency situation. Additionally, we ask that you consider a temporary waiver of the recordkeeping requirements, or provide clear additional enforcement guidance and discretion so that LRRP certified firms are not unintentionally deterred from performing work during this chaotic and pressing time. We do not want to see confusion or uncertainty hinder recovery or inhibit public health protection.

We believe that this action is exactly what President Obama spoke about on October 30th, when he spoke at the American Red Cross saying ". . .[M]y instructions to the federal agency has been, do not figure out why we can't do something; I want you to figure out how we do something. I want you to cut through red tape. I want you to cut through bureaucracy. . ." We do not want to see the red tape of LRRP recordkeeping stop one family or childcare facility from being renovated in a timely fashion by the appropriately trained and well qualified firms.

We appreciate your prompt attention to this matter, and ask that you keep us informed of all actions that you are taking in regards to LRRP and the recovery from Sandy.

Sincerely,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 31 2012

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Susan Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter of November 30, 2012, to the U.S. Environmental Protection Agency's Administrator, Lisa P. Jackson, addressing how the Lead Renovation, Repair, and Painting Rule affects renovations performed under emergency conditions, particularly as this affects repairs in the wake of Hurricane Sandy.

In mid-November 2012, just days after the storm, EPA posted a new web page entitled, Hurricane Sandy Response and Recovery, to assist those dealing with post-disaster issues. The website can be found at http://www.epa.gov/sandy/index.html. As part of this effort, EPA included information on how the RRP rule applies in emergencies such as Hurricane Sandy. The website provides a downloadable/ printable copy of the enclosed EPA fact sheet, as well as links to state and local authorities who may also assist the public in dealing with this and other issues.

As your letter highlights, RRP emergency exemption provisions have been implemented previously in response to other natural disasters. In response to these events, the EPA has taken measures to make this information easily obtainable and provide further clarity on the emergency provision. For example, in 2010, following the severe flooding in Tennessee and nearby states, the EPA issued specific guidance on the applicability of the emergency exemption. The EPA's Regional Offices are at the forefront of distributing this information and, as you note, the Region 4 Office offered guidance after severe flooding in Tennessee in May 2010. Similarly, the agency provided guidance on emergency renovations after tornadoes in Joplin, Missouri, and elsewhere in the southeast in the spring of 2011. In addition, in September 2011, the EPA issued a nationwide fact sheet on the emergency exemption guidance. This EPA assistance and guidance have resulted in successful implementation of the emergency provisions and thereby streamlined compliance with the RRP rule requirements.

As you may know, the intent of the emergency provision in the RRP rule is to allow emergency repairs to be performed in a lead-safe yet streamlined manner. In providing for the emergency provision, the agency attempted to provide for speedy initial repairs by eliminating requirements such as notice, initial waste handling, and contractor training and certification. However, there are compelling reasons for conducting renovations under lead-safe conditions such as cleaning, cleaning verification, and recordkeeping to document the use of lead-safe practices: they confirm that the dwelling is lead-safe. The recordkeeping requirements are neither onerous nor difficult to understand. The EPA's one-page

sample recordkeeping checklist demonstrates how easy it is to comply with the recordkeeping requirements. Renovation firms who take advantage of the emergency renovation provisions need only add a short description of the nature of the disaster and a short explanation of why certain RRP rule requirements could not be followed.

Given the successful implementation of the emergency provision guidance during disaster situations in Tennessee, Missouri, and other areas, the EPA believes that a temporary waiver of the recordkeeping requirements for those impacted by Hurricane Sandy is not warranted and contrary to our shared goal of protecting public health. The RRP recordkeeping requirements are not only very simple and straightforward but also provide a useful tool for confirming what occurred in the course of renovation. This ensures that residents, already burdened with issues resulting from a natural disaster, are not doubly burdened by uncertainty regarding whether their home will pose a health threat.

Again, thank you for your letter. I hope the information provided is helpful to you. If you have additional questions, please contact me, or your staff may contact Mr. Sven-Erik Kaiser in the EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753.

Sincerely,

James J. Jones
Acting Assistant Administrator

Enclosure

EPA United States Environmental Protection Agency

Nov 2012

Post-Disaster Renovations and Lead-Based Paint

Natural disasters, such as tornadoes, hurricanes, earthquakes or floods, often result in the need for renovations to damaged homes and other structures. When common renovation activities like sanding, cutting, and demolition occur in structures that contain lead-based paint, such activities create lead-based paint hazards, including lead-contaminated dust. Lead-based paint hazards are harmful to both adults and children, but particularly pregnant women and children under age six.

To protect against health risks, EPA's Renovation, Repair and Painting (RRP) Rule is designed to minimize exposure to lead-based paint hazards. Under this Rule, contractors performing renovation, repair and painting projects that disturb painted surfaces in homes and child-occupied facilities (including day care centers and schools), built before 1978, must, among other things, be certified and follow lead-safe work practices. For complete information about the RRP Rule and its requirements, go to: www.epa.gov/lead/pubs/renovation.htm#requirements.

To ensure that property owners and occupants are able to act quickly to preserve their homes and property in the wake of disasters, the RRP Rule includes an emergency provision exempting firms from certain requirements. See 40 CFR 745.82(b). Emergency renovations are defined as renovation activities that were not planned but result from a sudden, unexpected event that, if not immediately attended to, present a safety or public health hazard, or threaten equipment and/or property with significant damage. See the RRP Frequent Questions (FQ), #23002-32367, available at: http://toxics.supportportal.com/ics/support/splash.asp?deptID=23019.

What is EPA's Renovation, Repair and Painting (RRP) Rule?

Contractors performing renovation, repair and painting projects that disturb more than six square feet of painted surfaces in homes and child occupied facilities (including day care centers and schools) built before 1978 must, among other things, be certified and follow lead-safe work practices. Federal law requires that individuals receive certain information, such as EPA's Renovate Right brochure, before starting work.

Under the emergency provision of the RRP Rule, contractors performing activities that are immediately necessary to protect personal property and public health need not be RRP trained or certified and are exempt from the following RRP Rule requirements: information distribution, posting warning signs at the renovation site, containment of dust, and waste handling. Firms are NOT exempt from the RRP Rule's requirements related to cleaning, cleaning verification, and recordkeeping. Further, the exemption applies only to the extent necessary to respond to the emergency. Once the portion of the renovation that addresses the source of the emergency is completed, the remaining activities are subject to all requirements of the RRP Rule.

My home has been severely damaged and will require extensive renovations. Does the RRP Rule apply?

The RRP Rule does not apply to an activity that demolishes and rebuilds a structure to a point where it is effectively new construction. Thus, in pre-1978 homes and child-occupied facilities where all interior and exterior painted surfaces (including windows) are removed and replaced, the provisions of the RRP Rule would not apply. Activities involving the removal and replacement of only some interior and exterior painted surfaces would still be covered under the RRP Rule. For more information, see the Frequent Questions (FQs 23002-18426 and 23002-23415) on our website at: http://epa.gov/lead/pubs/rrp-faq.pdf.

continued on back >

Important Notice To Homeowners

If you hire a contractor to perform renovation work on your pre-1978 home, you should be aware that, generally, your hired professional must be RRP-certified and observe the requirements of the RRP Rule. However, if the circumstances necessitate an emergency renovation as defined above, the professional need not comply with certain requirements of the RRP Rule as described earlier — but only to the extent necessary to respond to the emergency. The RRP Rule does not impose requirements on a homeowner performing work on an owner-occupied residence. However, EPA encourages homeowners to hire certified professionals that have received required training on lead-safe work practices to prevent lead contamination. Homeowners that choose to perform renovation work themselves should take steps to contain the work area, minimize dust and clean up thoroughly. To learn how to perform renovation work safely, contact the National Lead Information Center, 1-800-424-LEAD (5323).

What steps should homeowners take to protect themselves and their families from exposure to lead dust if they plan on doing their own renovations?

- Contain the work area so that dust does not escape from the area. Cover floors and furniture that cannot be moved with heavy-duty plastic and tape, and seal off doors and heating and cooling system vents.
- Keep children, pregnant women, and pets out of the work area at all times.
- Minimize dust during the project by using techniques that generate less dust, such as wet sanding or scraping, or using sanders or grinders that have HEPA vacuum attachments which capture the dust that is generated.
- Clean up thoroughly by using a HEPA vacuum and wet wiping to clean up dust and debris on surfaces. Mop floors with plenty of rinse water before removing plastic from doors, windows, and vents.

State and local information on lead paint:

NJ: http://www.state.nj.us/dep/dshw/rrtp/lbpaint.htm
http://www.state.nj.us/health/iep/lead_faq.shtml#What_to_Do_if_You_Have_Lead

NY: http://www.health.ny.gov/environmental/lead/renovation_repair_painting/
http://www.health.ny.gov/publications/2502/index.htm

NYC: http://www.nyc.gov/html/doh/downloads/pdf/ehs/cleaning-safety.pdf

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-05-001-8880

DEC 30 2005

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office's (GAO) report recommendation concerning protecting the nation's agriculture from terrorist attacks. The report is entitled Homeland Security: Much is Being Done to Protect Agriculture from a Terrorist Attack, but Important Challenges Remain (GAO-05-214). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

To address management problems that reduce the effectiveness of agencies' routine efforts to protect against agroterrorism, GAO recommends the Secretaries of Homeland Security, Agriculture, and Health and Human Services, and the Administrator of the Environmental Protection Agency compile relevant after-action reports from test exercises and real-life emergencies and disseminate the report through the Homeland Security Information Network that the Department of Homeland Security (DHS) is developing.

EPA Response

EPA agrees with the recommendation. Currently, EPA On-Scene Coordinators compile after-action reports for either the U.S. National or Regional Response Teams as required by the Oil and Hazardous Substances National Contingency Plan. We will include agricultural components to the report when the release affects a farm or agricultural resource. EPA will provide the report to DHS once the Homeland Security Information Network is developed.

In response to an agricultural terrorism attack, the Department of Agriculture (USDA) coordinates the effort and EPA provides a supportive role. These responsibilities are stated in Emergency Support Function #11 of the National Response Plan (NRP), and the Draft Federal

Interagency Food and Agriculture Decontamination and Disposal Concept of Operations under Homeland Security Presidential Directive #9. EPA will continue to work with USDA in protecting the nation's agriculture from a terrorist attack and implement interagency procedures in fulfilling these responsibilities.

Thank you for the opportunity to respond to the recommendations. If you have any questions, please contact me or your staff may contact Jim Blizzard in EPA's Office of Congressional and Intergovernmental Relations at 202-564-1695.

Best wishes,

Lyons Gray

Lyons Gray
Chief Financial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-06-001-9076

DEC 0 1 2006

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office's (GAO) report recommendation concerning perchlorate and actions taken to cleanup the chemical or eliminate the source. The report is entitled Perchlorate: A System to Track Sampling and Cleanup Results Is Needed (GAO-05-462). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

In order to ensure that EPA has reliable information on perchlorate and the status of cleanup efforts, and to better coordinate lessons learned between federal agencies and states on investigating and cleaning up perchlorate, GAO recommends that, in coordination with states and other federal agencies, EPA use existing authorities or seek additional authority, if necessary, to establish a formal structure to centrally track and monitor perchlorate detections and the status of cleanup efforts across the federal government and state agencies.

EPA Response

EPA agrees that it is important to maintain reliable information on perchlorate, including cleanup efforts, and we maintain data systems that include information on perchlorate. We do have broad-based information on perchlorate releases at sites where EPA is involved, where EPA is assisting a state regulatory agency or where another federal agency has provided information to the Agency. When those sites are on the Superfund National Priorities List, our Comprehensive Environmental Response, Compensation, and Liability Act Information System (CERCLIS) contains more detailed information about response actions and perchlorate. In addition, we have information on the presence of perchlorate in public water supplies that has been provided by public water suppliers, states, EPA regional offices, and other federal agencies. We believe these systems provide EPA with sufficient information to track and monitor perchlorate detections and cleanup actions; therefore, EPA believes that an additional tracking system would be duplicative and not cost-effective. The benefits of an additional system, as recommended, are unclear.

Thank you for the opportunity to respond to the recommendation. If you have any questions, please contact me or have your staff contact Lauren Mical in EPA's Office of Congressional and Intergovernmental Relations at 202-564-2963.

Best wishes,

Lyons Gray

Lyons Gray
Chief Financial Officer

SUSAN M. COLLINS
MAINE

461 DIRKSEN SENATE OFFICE BUILDING
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COMMITTEES
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ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-1904

AL-07-000-8324

160 Main Street
Biddeford, ME 04005
May 10, 2007

Ms. Stehpanie Daigle
Associate Administrator Congressional Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Dear Ms. Daigle:

Senator Collins has been contacted by [redacted] of Kennebunk, Maine with a request for assistance. Mr. [redacted] expressed concern regarding the Environmental Protection Agency's (EPA) enforcement of Industrial Wastewater Pretreatment regulations under the Clean Water Act, particularly in the New England region. Mr. [redacted] expressed a belief that the EPA Region 1 is more committed to enforcing regulations than achieving regulatory goals; he expressed concern regarding the effects of this approach on business owners.

Senator Collins has a strong desire to be responsive to constituent requests; with this in mind, I have taken the liberty of forwarding a copy of Mr. [redacted] letter to Senator Collins to you. Please review Mr. [redacted] concerns and respond directly to him, providing any appropriate assistance to assure that his concerns are addressed.

Thank you for your consideration of Mr. [redacted] letter. If you have any questions, or need additional information, please do not hesitate to contact Mr. Campbell directly at (207) 985-2672.

Sincerely,

Deidre Anderson

Deidre Anderson
Staff Assistant to
Susan M. Collins
United States Senator

Enclosure

State of New Hampshire

Senator Judd Gregg
393 Russell Senate Office Building
Washington, DC 20510
(202) 224-3324

Senator John Sununu
111 Russell Senate Office Building
Washington, DC 20510
(202) 224-2841

Congressman Paul Hodes
506 Cannon House Office Building
Washington, DC 20515
(202) 225-5206

Congresswoman Carol Shea-Porter
1508 Longworth HOB
Washington, DC 20515
(202) 225-5456

State of Maine

Senator Olympia Snowe
154 Russell Senate Office Building
Washington, DC 20510
(202) 224-5344

Senator Susan Collins
413 Dirksen Senate Office Building
Washington, DC 20510
(202) 224-2523

Congressman Tom Allen
127 Longworth House Office Building
Washington, DC 20515
(202) 225-6116

Congressman Michael Michaud
1724 Longworth House Office Building
Washington, DC 20515-1902
(202) 225-6306

April 25, 2007

Dear Senators and Representatives,

I am writing to ask for your assistance in resolving a situation involving the USEPA's handling of enforcement of Industrial Wastewater Pretreatment regulations under the Federal Clean Water Act (CWA). Although I currently serve as the Industrial Wastewater Pretreatment Program Manager for the Town of Seabrook, I am making this request as a private citizen and a taxpayer.

As with many Federal regulatory agencies, the EPA has limited resources with which to accomplish it's many missions. To enforce Industrial Wastewater Pretreatment regulations, it is my understanding that there are only two inspectors for the whole of New England. To aid in enforcement, the EPA has solicited the help of the states which, in turn, have passed enforcement responsibility on to the *larger* municipal sewer authorities. All industries that discharge to *smaller* municipal sewer systems (such as Seabrook), however, remain the direct responsibility of EPA.

To effectively achieve uniform compliance with these regulations across the region, it would seem that EPA should be enlisting the support and cooperation of local pretreatment coordinators such as myself; however, my mission is first and foremost to represent the interests of the people of Seabrook by preventing damage to the local wastewater infrastructure and ensuring that the municipal wastewater plant doesn't violate the Town's federal NPDES permit. Further, I have a professional and ethical obligation to accomplish my goals in such a manner as to minimize any adverse impacts on local businesses and the local economy. If forced to choose between supporting EPA in their mission and protecting the interests of the people of Seabrook, my responsibility is clear.

As I approach the latter stages of a 30-plus year career in environmental science working with numerous state and federal regulatory agencies, I've learned that there are generally two types of regulators - those committed to enforcing regulations and those committed to achieving regulatory goals. It's not at all uncommon for these two philosophies to be mutually exclusive, and in this instance EPA Region 1 seems to favor the former.

Case in Point

Martin International Enclosures, Inc. (Martin) is a small manufacturer of metal cabinets for commercial computer rack systems. Located in Seabrook, this company produces a high quality product and provides employment for about 30 local residents. Martin's total industrial wastewater output amounts to only about 1000 gallons *per year* - miniscule even by small town standards. Analytical data obtained by the Town and provided to EPA indicates that the wastewater does not contain any contaminant that would make it unsuitable for direct discharge to the sanitary sewer without pretreatment.

When I first approached company owner Michael Martin in February of last year about issuing a *local wastewater discharge permit*, I told him that one cleaning step in his manufacturing process *might* cause the company to fall under Federal wastewater pretreatment regulations. In the spirit of intergovernmental cooperation, I asked him to write to EPA and request a determination. Mr. Martin did not hesitate to comply with this or any of my other requests, and municipal and state wastewater discharge permitting requirements were met in a smooth and expeditious manner.

EPA, meanwhile, responded by sending Martin a 15-page letter (called a "308 letter") demanding that the company provide extensive, detailed information about its facilities, history and operations. It is my understanding that Mr. Martin provided all of the specified information as directed. In December, Martin submitted it's semiannual compliance report to EPA as required.

Then, this past week, I received a telephone call from Mr. Martin who was understandably concerned to learn that EPA is proposing to fine his small company $14,000. When I telephoned the EPA in Boston, I was told that the fine is for the company's failure to submit compliance reports prior to 2006. I believe this is simply a case of a small company that wasn't aware that a regulation existed at all. Technically, their oversight was indeed a violation, albeit a procedural one, but it brings me to the point of this letter and to my request.

I'm as committed to protecting and restoring our natural world as anyone in government, and because there is still so much to be done I believe it is crucial that the available resources be used wisely and in a manner that will most effectively *achieve tangible results*. This is the second time in less than three years that EPA has used information voluntarily generated by this office to come down hard on a good, responsible business for procedural mistakes. (During this same time period, I brought a suspected illegal discharger to EPA's attention and, to the best of my knowledge, the matter has never been investigated.)

Staying on top of the myriad rules and regulations imposed on small business by federal, state and local governments has become a near-impossible task for even the most well intentioned of business owners. It seems to me that we should be trying to help those who truly want to do the right thing, rather than trying to "catch and punish" those who make honest mistakes. Actions such as the one related here result in no identifiable benefit to the environment, but they do cost EPA the trust and good will of many local regulators that the agency can ill afford to lose.

As a concerned citizen then, I am asking each of you to please do what you can to encourage the EPA in general, and the New England Region in particular, to redirect their enforcement efforts toward helping honest, well-meaning businesses to achieve and maintain compliance, and toward catching those who are actually engaged in activities that may be harmful to the environment. I realize this isn't a very glamorous problem for an elected official to address, but it would certainly help your constituents to get more "bang for their (tax) buck".

Of course, if you are able to intercede in any way on behalf of Martin International, I'm sure your efforts there would be greatly appreciated as well.

I apologize for the lengthy letter but I feel this is important and should be addressed. Thank you for your time and attention.

Sincerely,

Ex. 6

tel:
email:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

June 4, 2007

OFFICE OF THE
REGIONAL ADMINISTRATOR

Mr

Dear Mr

Your April 25, 2007 letter to Senator Susan M. Collins regarding EPA's enforcement of the industrial wastewater pretreatment provisions of the Clean Water Act has been referred to EPA's New England Office for response.

We are not able to discuss specific details of an on-going enforcement action, but we can comment on the regulatory goals of the pretreatment regulations and on our Region's approach to achieving them. As you know, the pretreatment regulations are designed to ensure that pollutants discharged by industrial facilities to publicly-owned treatment systems do not cause harm to the treatment systems or the employees working in them, interfere with the treatment processes, or pass through into receiving waters in harmful quantities. Certain industrial categories have a high potential to discharge harmful quantities of pollutants. The regulations set limits on the amount of pollutants discharged by industrial facilities in these categories. The regulations also require that these categorical industrial facilities periodically sample and report the level of pollutants contained in their discharges to the publicly-owned sewers. Since neither EPA nor the state environmental agencies have adequate resources to inspect every categorical industrial user on a regular basis, reports submitted by these facilities are the primary means of determining whether they are discharging harmful quantities of pollutants to the municipal wastewater treatment systems.

Our regional office believes that it is appropriate to take an enforcement action when categorical industrial facilities fail to report. The reporting requirement has existed since the early 1980s, so categorical industrial facilities are well aware of it. If a facility fails to perform the required sampling and reporting, there is no way to go back in time to recreate the missing data. Money not spent to perform the required sampling, creates an economic advantage for the non-complying industry against its competitors who do comply with the law. The possibility of enforcement removes this economic incentive to violate. The Region does recognize that the size and sophistication of the industrial user, and the length and severity of the violations varies from case to case. These factors are considered in determining the appropriate enforcement response.

Thank you for your interest in this matter. If you would like to discuss it further, please do not hesitate to contact George Harding of the Office of Environmental Stewardship at (617) 918-1870.

Sincerely,

Robert W. Varney
Regional Administrator

cc: Senator Susan M. Collins

SUSAN M. COLLINS
MAINE

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United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES:
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, RANKING MEMBER
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

AL-08-000-4240

March 11, 2008

Luis A. Luna
Assistant Administrator
Office of Administration and Resources Management
United States Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Luna:

Thank you for your invitation to attend the National Suspension and Debarment Conference. I would like to extend greetings to all the Conference attendees on this the 25th anniversary of the government-wide suspension and debarment system.

As a Senate staffer, I was involved in the Congressional hearings that led to the creation of the government-wide system in 1982. Today, as the Ranking Member of the Homeland Security and Government Affairs Committee, I am committed to ensuring that the system functions efficiently and effectively. I want to commend EPA and the other Executive Branch agencies for convening this Conference and reaching out to experts from academia, the private bar and other interested parties, to identify best practices and ways to strengthen the government-wide system.

Suspension and debarment are two of the Federal Government's most important tools for combating waste, fraud and abuse in Federal procurement and assistance programs. While Congress may use its legislative powers to direct suspension and debarment policy, the ultimate success of the suspension and debarment remedy depends on how it is administered by the Executive Branch. This means that Federal agencies with contract and grant functions have an obligation to the taxpayer, particularly during a time of tight budgets, to work together to protect the Government from doing business with non-responsible parties. In keeping with that obligation, and during the Conference deliberations, I encourage all of the Federal agencies involved to bring fresh ideas to the table that will allow the government-wide system to meet the challenges of the next 25 years.

Thank you again for your involvement and I trust that the Conference will be a great success.

Sincerely,

Susan M Collins

Susan M. Collins
Ranking Minority Member

SUSAN M. COLLINS
MAINE

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ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-1904
68 Sewall Street, Room 507
Augusta, ME 04330

July 15, 2009 AL-09-001-1458

Ms. Joyce K. Frank
Acting Associate Administrator for Congressional
and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20005

Dear Ms. Frank:

Senator Susan Collins was recently contacted by the Tri-County Young Marines. They are planning to hold their week-long encampment from August 8-15 at the Maine National Guard's Bog Brook Training facility in Gilead, Maine.

The encampment will offer youth the opportunity for skill development, physical fitness, and personal development in a safe, outdoor environment under the supervision of qualified adult leaders. The program is open to boys and girls aged 8 through high school. The Young Marines have contacted Senator Collins's office in regards to securing outside speakers with hands-on demonstrations and/or educational activities that could make the week even more meaningful. It is my hope that someone in the Environmental Protection Agency may be available with a presentation that could excite and inspire the youth of central Maine.

The primary contact person for the Tri-County Young Marines is Mr. Joe Barbioni. He may be reached at (207) 293-2567 (home) or (207) 441-1082 (cell). He is also available via e-mail at jeb04352@yahoo.com.

Thank you for your help in this matter. Please do not hesitate to contact me at Senator Susan Collins' Augusta office at (207) 622-8414 should you have any questions.

Sincerely,

Chuck Mahaleris
Staff Assistant to
Susan M. Collins
United States Senator

Michael Ochs/R1/USEPA/US
08/24/2009 04:39 PM

To Carol Krasauskis/R1/USEPA/US@EPA
cc
Subject Re: Annual request from Sen. Collins for speakers at Tri-County Young Marines

Carol -

I placed a call to the director of the camp to offer epa staff participation. I never received a call back, so I assume at that point they were no longer seeking epa participation.

Sent by EPA Wireless E-Mail Services
Carol Krasauskis

----- Original Message -----
From: Carol Krasauskis
Sent: 08/24/2009 07:23 AM EDT
To: Michael Ochs
Subject: Fw: Annual request from Sen. Collins for speakers at Tri-County Young Marines

Michael Ochs/R1/USEPA/US
08/10/2009 10:47 AM

To Carol Krasauskis/R1/USEPA/US@EPA
cc
Subject Re: Fw: Annual request from Sen. Collins for speakers at Tri-County Young Marines

Carol -

I just called Mr. Joe Barbioni to see whether he was still interested in having someone from EPA at the camp this week. If he says yes, I will talk with Mike Kenyon to see whether anyone from his office is available. Hopefully he will say no and we can close it out.

Michael Ochs
Congressional/State Relations
U.S. EPA New England
One Congress Street, Suite 1100
Boston, MA 02114-2023
Phone: (617) 918-1066

particular use" (40 C.F.R. § 131.3(b)). Of equal importance, criteria must be linked to designated uses and "must be based on sound scientific rationale" (40 C.F.R. § 131.11(a)).

We appreciate that EPA has been willing to engage in subsequent discussions with Maine DEP staff and understand that a label of "indeterminate" is proposed for water bodies that exceed the numeric criteria but do not exceed the narrative standard. As described during a November 1st stakeholders' meeting, the indeterminate decision could require Maine DEP to conduct further assessments including formal site-specific criterion development. We are particularly concerned about how the determination in these situations will be made, as significant additional testing can be expensive. The Maine DEP should have the ability in the final rule to make technical adjustments and decisions based on their long history of being good stewards of the state's waters.

Recognizing the importance of protecting water quality in Maine, we urge EPA to continue to work with the Maine DEP to implement a rule that is not cumbersome and allows the DEP to take timely enforcement and corrective action if necessary. Maine has many years' worth of data that scientifically supports its approach in developing nutrient criteria for fresh surface waters within the state and linking those criteria to designated uses. Maine has one of the best water quality protection programs in the country in terms of water quality criteria and standards development, permitting of discharges, and administration of its delegated program.

For these reasons, we ask EPA to clarify the role of the Maine DEP in implementing rules to ensure the protection of our state's water quality when a water body falls within the indeterminate category.

Thank you in advance for your attention to this important matter. We look forward to your response.

Sincerely,

Olympia J. Snowe
United States Senator

Susan M. Collins
United States Senator

Michael Michaud
Member of Congress

Chellie Pingree
Member of Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

February 15, 2011

The Honorable Susan Collins
United States Senate
413 Dirksen Senate Office Building
Washington, D.C. 20510

OFFICE OF THE
REGIONAL ADMINISTRATOR

Dear Senator Collins:

Thank you for your January 21, 2011 letter concerning the role of Maine's Department of Environmental Protection (Maine DEP) in determining the appropriate Clean Water Act (CWA) listings for nutrient impaired waters, and the state's ability to rely on narrative, rather than numeric, nutrient criteria. Maine DEP has made considerable progress in working towards mitigating nitrogen and phosphorus pollution, and the Environmental Protection Agency (EPA or Agency) appreciates and recognizes these important efforts. Administrator Jackson has asked me to respond on her behalf in coordination with her national program managers.

Nitrogen and phosphorus pollution impacts water supplies, aquatic life, and recreational water quality across the United States. EPA's regulations at 40 CFR Part 131.11 specify that criteria "must contain sufficient parameters or constituents to protect the designated use." Therefore, EPA considers state adoption of numeric criteria for nitrogen and phosphorus, the causal parameters directly responsible for eutrophication in near-field and/or downstream waters, a priority. While states may adopt a narrative nutrient criterion[1] in conjunction with numeric criteria for nitrogen and phosphorus, the numeric criteria will allow states to quantitatively evaluate waters for use attainment and promote consistency in assessment and permitting.

EPA recognizes that there is analytical, spatial, and temporal variability associated with environmental data, which should be considered in deriving numeric criteria for nitrogen and phosphorus. If desired, states may subcategorize waters (e.g., cool water aquatic life, warm water aquatic life) or use a tiered aquatic life use approach and apply the criteria accordingly. Regardless of how the state chooses to categorize its waters, the uses and the criteria to protect those uses must be consistent with 40 CFR Part 131.10 which implements CWA Sections 303 and 101(a)(2), and requires states to designate their navigable waters to provide for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, wherever attainable. Furthermore the state's designated uses should be supported by the appropriate technical and scientific data and analyses per 40 CFR Parts 131.6(b) and 131.11. EPA can work with states to adjust the state-adopted causal parameter criteria to account for site-specific conditions that continue to assure attainment of applicable water quality goals.

[1] EPA is aware of Maine's narrative nutrient criteria for Class GPA waters which apply to great ponds, natural lakes and ponds less than 10 acres in size (Maine Revised Statute, MRS, 38 §465-A Paragraph 1.B). However, Maine's Standards for Classification of Fresh Surface Waters (MRS 38 §465), for fresh waters which are not great ponds, and Standards for Classification of Estuarine and Marine Waters (MRS 38 §465-B) do not include narrative criteria specific to nutrients. Maine currently assesses rivers, streams, and estuarine and marine waters against general aquatic life use support and biological narrative standards. Assessment methods for measurement of these general standards, explained in Maine's Comprehensive Assessment and Listing Methodology (CALM), include nutrient enrichment measures such as excessive plant and algal growth.

Maine DEP proposed draft rules in February 2010 that included numeric criteria for total phosphorus as well as for biological indicators of eutrophication, such as chlorophyll-a, secchi depth (transparency), and algal cover, for fresh waters. The February 2010 draft rule included a waterbody assessment approach to use only the biological eutrophication indicators to assess impairment. Once biological impairment was indicated, numeric phosphorus criteria were only to be used to identify whether phosphorus would be listed as the cause of the impairment. Therefore a water body could be exceeding the phosphorus criteria, but be found to meet water quality standards because biological criteria had been attained. In that case, no numeric phosphorus criteria would apply for the purposes of protecting the water body from future impairments. In EPA's March 2010 letter to Maine DEP, we agreed that the proposed numeric phosphorus thresholds were protective and approvable, but pointed out that criteria are applicable not just for assessment and restoration of impaired waters, but also to ensure that water bodies that are meeting designated uses do not become impaired. Establishing numeric criteria for nitrogen and phosphorus, the nutrient causal parameters directly responsible for eutrophication in immediate and/or downstream waters, is a protective approach which helps ensure compliance with 40 CFR 131.11(a) which states: "States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use."

Following discussions with EPA Region 1 staff, Maine DEP revised the draft rule to provide for the development of higher, site-specific phosphorus criteria within a defined range. Given the flexibility incorporated in Maine's revised approach, and the minimal number of waterbodies that would likely necessitate site specific criteria, Maine should have the ability to apply site-specific criteria as needed.

I appreciate Maine's interest and efforts in mitigating nitrogen and phosphorus pollution. EPA looks forward to continuing to work with Maine to develop a scientifically and legally defensible approach to protecting the state's waters from nitrogen and phosphorus pollution.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Ms. Michael Ochs in the Office of Government Relations at (617) 918-1066, or Stephen Silva, Water Quality Branch Chief, at (617) 918-1561.

Sincerely,

H. Curtis Spalding
Regional Administrator

AL-11-000-5903

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

April 15, 2011

Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

We are writing to express concerns about additional regulatory actions that the Environmental Protection Agency is planning to take regarding the "Lead: Renovation, Repair and Painting Rule" (LRRP).

We first contacted you with our concerns about the implementation of this rule in May 2009. Though implementation was difficult, the rule is now fully in place and, thanks to the June 2010 enforcement guidance, EPA has trained significantly more contractors than it initially estimated it would need for compliance.

However, we now understand that, as a result of a legal settlement, EPA has already proposed new amendments to the LRRP rule. These amendments would require renovators to conduct "clearance testing" following a project's completion to prove the presence or absence of lead in homes. We are concerned about this amendment for a number of reasons.

First, poor planning for the initial LRRP resulted in the rule taking effect without having enough opportunities for renovators to become certified, massive confusion among homeowners about the necessity of paying extra for the LRRP compliance measures, and an inadequate amount of lead test kits. Additionally, EPA significantly underestimated the cost of compliance for small businesses and individuals.

Dramatic changes to the program, such as the requirement for clearance testing, will likely impose significant confusion and complication for renovators and remodelers who have already completed their LRRP training and will also result in additional costs for homeowners and renovators to pay for the clearance testing. We have heard from a number of our constituents that the higher costs from current LRRP renovators have pushed homeowners to either hire uncertified individuals or to perform renovation work themselves. This is absolutely counter to the intent of the rule, which is to protect people from the potential dangers of lead dust.

Second, this new requirement is a clear violation of congressional intent under the Toxic Substances Control Act (TSCA). Congress made clear that renovation activity and abatement activity are separate. Renovation work is governed by section 402 of TSCA and abatement work is under section 405. Additionally, EPA's own definitions make it clear that abatement and remodeling are different activities. The regulatory definition of abatement not only excludes remodeling activities, but defines abatement as the identification and permanent elimination of lead hazards. Remodeling activities, on the other hand, are not required to eliminate lead hazards but instead to repair, restore, or remodel the existing structure. By requiring remodelers to comply with the same lead hazards as the abatement firms will blur the lines between renovators and abatement firms, potentially harming both.

Finally, the identification of a lead hazard in rooms where the renovations have not occurred by remodelers will make renovators liable for existing lead in the home. Many of the homes where this work will be done may already have lead levels exceeding EPA's federal hazard level prior to renovation work. Regardless of whether the lead levels were cleared or not, renovators must leave documentation that confirms the presence of lead in the home that must be disclosed to future buyers or tenants.

This amendment raises some serious questions for us:

- Previous EPA studies have found that LRRP work practices and training requirements provide protection of public health. Has EPA received additional data regarding LRRP work practices and their health protections? We would be interested to review any new health or exposure data justifying an expansion of regulation to cover renovation work.

- Additionally, please provide us with the authority EPA has under TSCA to require remodelers to use clearance testing or dust wipe testing.

- Finally, it appears that EPA's initial cost estimate included a lower number of renovations requiring lead safe work practices due to approval of "next generation" testing kits. Unfortunately, none of those kits were approved. With the test's false positives, will EPA be revising its economic analysis of this rule, given the unavailability of new testing kits, and the higher number of jobs that require lead safe work practices?

Protecting pregnant women and children from lead exposure is important to all of us and we continue to support the intent of the LRRP rule. However, these amendments could have the unintended consequence of driving people away from using LRRP certified renovators and missing the clear benefits that come from employing LRRP renovators.

Thank you for your consideration of this important matter.

Sincerely,

Jim McCain Susan M. Collins

David Vitter

Olympia Snowe

Chuck Grassley

Roy Blunt

John Barrasso

Michael B. Enzi

John Hoeven

Mike Johanns

Lamar Alexander

Tom Coburn

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 1 1 2011

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter of April 15, 2011, to the U.S. Environmental Protection Agency (EPA) expressing your concerns about proposed amendments to EPA's 2008 Lead Renovation, Repair, and Painting Rule (RRP rule), which requires most contractors who disturb paint in housing built prior to 1978 to be certified by EPA and trained in lead-safe work practices.

As you are aware, the RRP rule is an important part of the Federal government's overall strategy for eliminating childhood lead poisoning. Congress directed EPA to develop training and certification requirements for lead activities, including renovations, as part of the Residential Lead-Based Paint Hazard Reduction Act of 1992. EPA issued the RRP rule in 2008, and it became fully effective in April 2010. The rule provides simple, low-cost, common-sense steps contractors can take during their work to protect children and families. Since the RRP rule became final, EPA and states have made significant progress in implementing its requirements, which will protect millions of children from exposure to lead-based paint during renovation activities. As of today, more than 86,000 firms have been certified, more than 500 training providers have been accredited to provide training in lead-safe work practices, and we estimate that more than 600,000 renovation and remodeling contractors have been trained in lead-safe work practices. These requirements are key to protecting all Americans and especially vulnerable populations, such as children and pregnant women, from the harmful effects of lead exposure.

Shortly after the final RRP rule was promulgated in 2008, several lawsuits were filed challenging the rule. These lawsuits (brought by industry representatives as well as environmental and children's health advocacy groups) were consolidated in the federal Circuit Court of Appeals for the District of Columbia Circuit. On August 26, 2009, EPA signed a settlement agreement with the environmental and children's health advocacy groups and shortly thereafter the industry representatives voluntarily dismissed their challenge to the rule. The settlement agreement required EPA to propose changes to the RRP rule to require dust wipe testing after many renovations already covered by the RRP rule.

Accordingly, on April 22, 2010, EPA issued a Notice of Proposed Rulemaking (NPRM) under the authority of Section 402(c)(3) of the Toxic Substances Control Act that would require dust wipe testing after many renovations covered by the RRP rule. The NPRM published in the Federal Register on May 6, 2010, opening a 60 day public comment period. At the request of several stakeholders, and because EPA recognized the importance of the issues raised by the NPRM, EPA reopened the public comment period for an additional 30 days on July 7, 2010.

Commenters on the proposed rule raised a number of issues, including the issues described in your letter. EPA has reviewed the more than 300 comments on the proposal and has considered them carefully in determining what final action on the proposal should be taken. A summary of these comments and EPA's responses will be made publicly available in the docket when the final rule is published.

The settlement agreement calls for EPA to take final action on the proposal by July 15, 2011. EPA intends to meet this deadline. The final rule is currently undergoing review by the Office of Management and Budget.

With respect to the content or substance of the final action, the settlement agreement does not constrain the Agency's traditional discretion with respect to taking a final action on a proposal for rulemaking. Under the Administrative Procedure Act (APA) agencies have the discretion to make changes to what was proposed, provided that such changes are a "logical outgrowth" of the proposal. The settlement agreement does nothing to disturb this discretion under the APA.

With regard to the economic analysis, EPA typically revises the economic analysis accompanying the proposed rule to address the options chosen in the final rule. The revised economic analysis will incorporate or address relevant comments or other information, including that related to test kits, received by EPA after the proposal was issued and before the final rule is promulgated.

Again, thank you for your letter and your support for the goal of preventing dangerous lead exposures. If you have additional questions or concerns, please contact me or your staff may contact Mr. Sven-Erik Kaiser in EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753.

Sincerely,

Stephen A. Owens
Assistant Administrator

AL-11-000-5905

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

April 15, 2011

Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

We are writing to express our concerns about additional regulatory actions that the Environmental Protection Agency is planning to take regarding the "Lead: Renovation, Repair and Painting Rule" (LRRP).

Following the finalization of EPA's LRRP Rule, several lawsuits were filed and on August 24, 2009, EPA entered into a settlement agreement with some of the petitioners. In the settlement agreement, EPA agreed to commence rulemaking to address renovations in public and commercial buildings to the extent those renovations create lead-based paint hazards. As a result of this agreement, by December 15, 2011, EPA must issue a proposal to regulate renovations on the exteriors of commercial buildings and public buildings built before 1978. EPA must take final action on that proposal and propose regulations for the interior of buildings by July 15, 2013.

The Residential Lead-Based Paint Hazard Reduction Act of 1992 gave EPA authority in the Toxic Substances Control Act (TSCA) to "apply the regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards." We are concerned that EPA is assuming that the majority of commercial buildings create a lead hazard without having the data to support it. In a 2010 report, EPA recognized the "scarcity of data related to dust exposures in public and commercial buildings and other non-residential settings," and that an extensive literature search "revealed relatively little information concerning typical levels of floor and window sill dust lead in public and commercial buildings." Yet EPA is moving forward at a very rapid pace to issue proposed regulations.

Additionally, under section 402(c)(2), EPA has an obligation to study "the extent to which persons engaged in various types of renovation and remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard on a regular or

occasional basis." Section 402(c)(3) says that EPA "shall utilize the results of the study under paragraph (2)" in determining what to regulate.

Relying on the dust studies done in residential settings and schools is not sufficient for promulgating rules on all existing commercial buildings. If EPA does not currently have sufficient data on the lead hazards in commercial buildings, it must study those lead hazards and gather that data prior to issuing regulations.

We are also concerned that the EPA seems to believe it can easily apply what it has done under residential LRRP to commercial buildings. Whereas a home owner or child care facility may only renovate a bathroom or kitchen once every 10 years, some commercial buildings are renovated continuously. Tenants move in and out of office buildings, requiring outfitting to meet their individual needs, mall shops move and change frequently, and many commercial and public buildings undergo upgrades to make them more energy efficient. Prior to issuing regulations, EPA must have a robust understanding of what renovation activities in public and commercial buildings entail, the frequency of these activities, and the relationship of these activities to ambient lead in the building. Without understanding what activities are likely to affect ambient lead levels in the building, EPA cannot write regulations and guidance that will actually create meaningful improvements to public health.

At a time when the nation's building industry has been in a severe recession and faces an unemployment rate of nearly 21 percent, we need to make sure that the rules EPA is promulgating will not present additional barriers to economic recovery. We appreciate your attention to this letter.

Sincerely,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 1 1 2011

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter of April 15, 2011, to the U.S. Environmental Protection Agency (EPA) expressing your concerns about EPA's plans to regulate the renovation of public and commercial buildings.

The Renovation, Repair, and Painting (RRP) rule that regulates the renovation of target housing (homes built before 1978) was signed on April 22, 2008. Shortly after this final rule was promulgated, several lawsuits were filed challenging the rule. These lawsuits (brought by industry representatives as well as environmental and children's health advocacy groups) were consolidated in the Circuit Court of Appeals for the District of Columbia Circuit. On August 26, 2009, EPA signed a settlement agreement with the environmental and children's health advocacy groups and shortly thereafter the industry representatives voluntarily dismissed their challenge to the rule.

The settlement agreement required EPA to fulfill the obligations Congress placed on the Agency in the Residential Lead-Based Paint Hazard Reduction Act of 1992. The Act required EPA to promulgate regulations addressing renovations activities in "public buildings constructed before 1978, and commercial buildings" that create lead-based paint hazards. With respect to renovations on the exterior of such buildings, the settlement agreement, as amended, provides that EPA must issue a proposal by June 15, 2012, and take final action on the proposal by February 15, 2014. In addition, EPA also agreed to determine whether hazards are created by renovations on the interiors of such buildings. For those interior renovations that create lead-based paint hazards, EPA agreed to issue a proposal by July 1, 2013, and take final action on the proposal no later than eighteen months after that.

Accordingly, EPA is currently developing a proposal to address exterior renovation jobs on public buildings constructed before 1978 and commercial buildings that, by virtue of their close proximity to residences and child-occupied facilities (*i.e.*, buildings frequented by children under the age of six), create lead-based paint hazards.

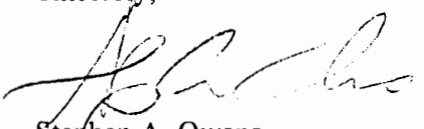
EPA agrees that it is necessary to have a robust understanding of new action in public and commercial buildings. Consistent with Section 402(c)(2) of TSCA, EPA has conducted extensive studies on renovation activities (http://www.epa.gov/lead/pubs/leadtpbf.htm#Renovation) during the development of the RRP rule. For example, EPA has conducted a study to evaluate lead dust generated in actual renovation situations, including hazards created by the use of various renovation and paint removal practices on different building components, known as "EPA's Dust Study" (USEPA. Characterization of

Dust Lead Levels After Renovation, Repair, And Painting Activities. November 13, 2007). EPA is also evaluating other data on exterior renovations. These studies provide a comprehensive picture of lead dust generation by renovation activities when lead-based paint is disturbed—regardless of the building type. EPA will use these studies, along with any other suitable studies identified as the result of a search of scientific literature to identify lead paint hazards generated by renovation activities on public and commercial buildings. EPA will provide the analysis of the hazards created during the renovation of public and commercial buildings in the proposed rule and will provide opportunity for public comment at that time. EPA is currently gathering data on the types and frequency of renovation activities commonly undertaken in public and commercial buildings.

EPA is also organizing a Small Business Advocacy Review (SBAR) panel to provide input that will be used by EPA during the development of the proposed rule. SBAR panels are comprised of representatives from the agency conducting the rulemaking (EPA in this case), the Small Business Administration, and the Office of Management and Budget. The Panel will consult with small entities on cost and economic implications of the future regulations addressing exterior renovation jobs on public buildings constructed before 1978 and commercial buildings. The SBAR panel will also seek information from participants on the types of activities typically undertaken during the renovation of public and commercial buildings and alternative regulatory requirements. As part of the rulemaking process, EPA also assesses the costs and benefits of any regulation it is required by Congress to implement. EPA is still gathering information to inform the development of an assessment of costs and benefits of this future proposed rule. Economic analyses for rulemaking efforts are performed for several statutes and executive orders and will be completed during the development of the proposed and final rule.

Again, thank you for your letter and your support for the goal of preventing dangerous lead exposures. If you have additional questions or concerns, please contact me or your staff may contact Mr. Sven-Erik Kaiser in EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753.

Sincerely,



Stephen A. Owens
Assistant Administrator

AL-11-000-8056

United States Senate

WASHINGTON, DC 20510

May 5, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue N.W.
Washington, DC 20004

Dear Administrator Jackson:

As you are aware, Congress passed H.R. 1473, the Department of Defense and Full-Year Continuing Appropriations Act of 2011, last month. Unfortunately, this legislation did not include specific language to provide funding for technical assistance and training for rural water utilities. This funding has been critical in helping rural communities comply with national drinking water standards since 1976. In dealing with complex regulations, small communities often need assistance to improve and protect their water resources. In implementing national priorities and standards, we must also address the unique needs of these communities.

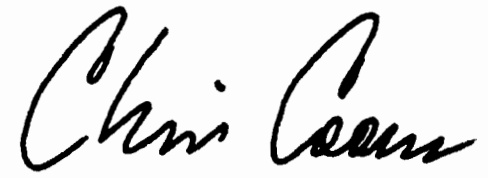
Secondly, it is important to place greater weight on initiatives that are effective and produce tangible results when making funding decisions. The technical assistance made possible by past funding of this program has enabled rural water utilities to provide quality drinking water in spite of their limited economies of scale. This assistance has and will continue to help rural water systems from Louisiana to Kansas to Alaska, and every other state in the nation, comply with national laws and regulations.

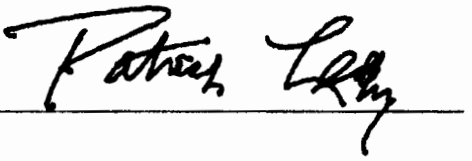
We respectfully request that you allocate $15 million in the Environmental Protection Agency Programs and Management account to carry out the Safe Drinking Water Act's technical assistance authorization provision (PL 104-182, 42 USC § 300j-1). If it is not possible to fund this competitive grant program, please let us know how the Environmental Protection Agency intends to ensure our nation's rural communities have the resources necessary to deliver safe drinking water. Thank you in advance for your consideration of this critical issue.

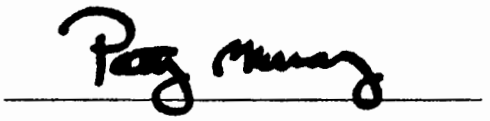
Sincerely,

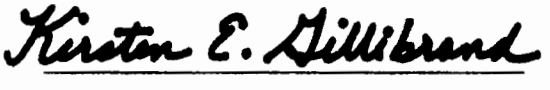
Mary L. Landrieu

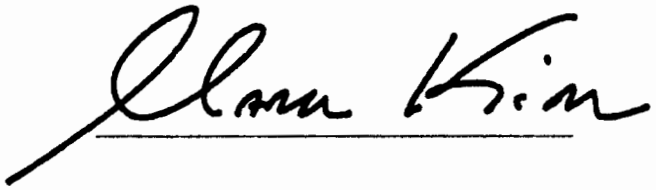
Jerry Moran

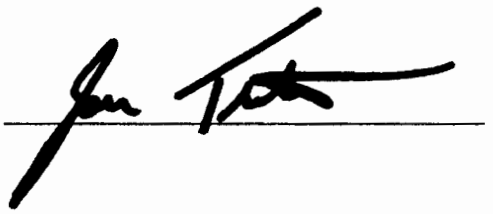


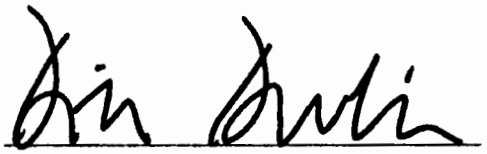


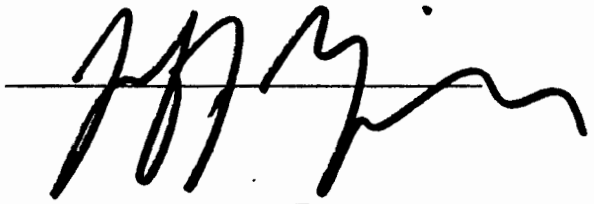



Kirsten E. Gillibrand









MARK ROYER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-11-001-0309

JUN 27 2011

THE ADMINISTRATOR

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

I appreciate the opportunity to meet with you on June 16, 2011, regarding the Environmental Protection Agency's (EPA) Non-Hazardous Secondary Materials (NHSM) rule, the Boiler Maximum Achievable Control Technology (MACT) rule, and the Commercial and Industrial Solid Waste Incinerators (CISWI) rule. Thank you for your constructive engagement on these priority issues. We are currently exploring various pathways under existing authority to address your concerns.

As you know, the Boiler MACT and CISWI standards are currently subject to an administrative stay. Today, as part of a filing with the United States Court of Appeals for the District of Columbia Circuit, the EPA announced the intended schedule for reconsideration of the boilers and CISWI rules. To ensure that the agency's standards are based on the best available data and that the public is given ample opportunity to provide additional input and information, the agency intends to propose the reconsideration rule by the end of October 2011 and issue a final rule by the end of April 2012. This is the best approach to establish technically and legally sound standards that will bring significant health benefits to the American public.

We believe that this stay and the reconsideration period will provide ample time to administratively address the issues raised by various stakeholders on these corresponding rules.

The NHSM rule, which we discussed in our meeting, aims to ensure that the burning of solid waste is subject to appropriate emission controls required under the Clean Air Act and that exposure to harmful pollutants is minimized. We understand that biomass derivatives have long been used for energy purposes in the wood products industry and we believe our rule allows such use to continue without being subject to the CISWI standards, provided that criteria, referred to as "legitimacy" criteria, are met.

Since promulgation of our rule, questions have arisen about how these criteria will be applied and our goal has been to ensure that the flexibility provided by the rule is in fact realized. To that end, we have held several meetings with industry representatives to discuss and understand their concerns and to review newly available data. In addition, on June 21, 2011, my Assistant Administrator for Solid Waste and Emergency Response, Mathy Stanislaus, met with representatives of several industries that use biomass derivatives and other non-hazardous

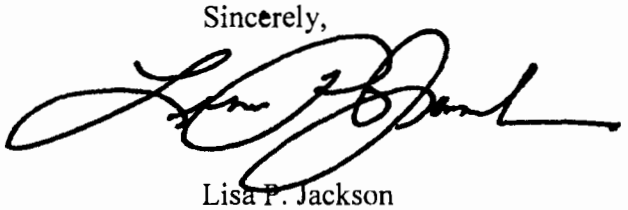
secondary materials as fuel to ensure that they understand the significant flexibility already afforded by the rule, and to discuss the EPA's concepts for further clarifying that flexibility.

As part of that discussion, Mr. Stanislaus explained that one of the options that EPA is considering is issuing clarifying guidance regarding the Agency's legitimacy criteria. Such guidance is a useful tool that is often used under the Resource Conservation and Recovery Act (RCRA) to address these types of issues. The guidance could provide a clear guidepost for comparing traditional fuels with secondary materials. It potentially could clarify that certain non-hazardous secondary materials would not be considered solid waste when combusted and that the units combusting those materials can continue to be used as fuels without having to meet the CISWI standards. Mr. Stanislaus requested that the industry representatives provide the Agency with supporting data on traditional fuels that could further inform the development of such guidance, and asked for feedback on the approach he outlined. In addition to this approach, the Agency is also exploring other options.

We recognize that stakeholders have also raised other issues with the NHSM rule. We are continuing to evaluate those issues expeditiously.

I believe we have made significant progress in addressing the concerns raised by the industry. I will continue to watch the issue closely and keep you informed. My goal is to bring these issues to closure as soon as possible.

Sincerely,



Lisa P. Jackson

United States Senate
WASHINGTON, DC 20510

A2-11-002-0094

November 30, 2011

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

The United States and Canada are committed to ensuring positive health benefits for North Americans through a reduction in sulfur content in fuel. This commitment forms the basis for their Emissions Control Area (ECA) application to the International Maritime Organization under the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex VI Treaty.

We support the goal of protecting public health. We understand that the Environmental Protection Agency (EPA), in conjunction with the maritime industry, has been examining the weighted averaging of emissions as a comparable means of achieving the public health and environmental benefits of the ECA. We endorse this approach and continued dialogue, which would allow industry to utilize a recognized scientific means of measuring emissions. As the EPA continues to review the air quality modeling assumptions, it is important to provide consistent protections for similar shoreside locations and population densities.

The EPA has recognized the use of exhaust gas scrubbing as an equivalent means of achieving similar environmental and public health benefits to utilizing low sulfur fuels. However, the agency has not yet recognized emissions averaging as an equivalent means of achieving the same results. Averaging, trading, and banking programs are being widely used for land-based sources of particulate matter and sulfur oxide emissions.

As members of Congress who represent communities dependent upon maritime commerce for their livelihood, we urge the EPA to exercise flexibility in determining equivalencies for compliance with the ECA, and in particular, to favorably consider

weighted averaging, and to recognize those equivalency determinations that other parties to MARPOL Annex VI have allowed. Within applicable rules and regulations, we would appreciate your full and fair consideration.

Sincerely,

DANIEL K. INOUYE
United States Senator

United States Senator

United States Senator

United States Senator

United States Senator

United States Senator

United States Senator

United States Senator

United States Senator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB - 6 2012

OFFICE OF
AIR AND RADIATION

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter to Administrator Lisa Jackson dated November 30, 2011. In your letter, you and your colleagues urge the U.S. Environmental Protection Agency to be flexible in considering equivalent compliance approaches for ships operating in the North American Emission Control Area (ECA), and in particular, to favorably consider weighted emission averaging.

As a matter of practice, we are generally supportive of ideas that will reduce compliance costs while providing equivalent emission reductions. For example, one of the prominent technologies investigated as an equivalency for low sulfur fuel is the use of exhaust gas cleaning systems, also known as oxides of sulfur (SOx) scrubbers. As noted in your letter, we support the use of SOx scrubbers as a compliance alternative to operating on lower sulfur fuel.

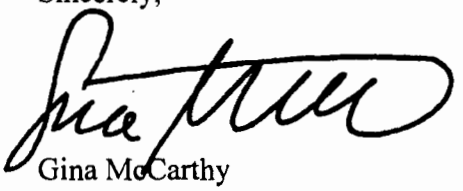
We have had several meetings with the Cruise Lines Industry Association (CLIA) who approached us with their thoughts on equivalency compliance approaches, including a concept for population-weighted emission averaging. It should be noted that population-weighting would be a significant departure from the averaging, banking, and trading programs currently used by the EPA. Under a traditional averaging approach, each ton of emissions increased from one source is offset with a full ton of emissions reduction from another source. Under a population-weighted emission averaging approach, one ton of emissions increased in one location could be offset with a decrease of much less than one ton of emissions in another location with a higher population density. In this way, weighted averaging provides a direct incentive to increase emissions when operating near communities with lower populations. For example, small emission reductions near Seattle and Vancouver could be used to offset much larger emission increases in Alaska.

We expressed to CLIA our concern that population-weighted averaging would result in a disproportionate burden of environmental harms and risks for citizens in different communities, depending on their population density. An approach trading off anticipated benefits in less populated areas raises Environmental Justice issues in that it could adversely affect under-represented communities in rural areas such as native Alaskan tribal nations. In addition, we expressed our concern to CLIA that population-weighted averaging would result in a net increase in tons of emissions of sulfur oxides, particulate matter, and air toxics (including heavy metals) in the ECA. This net increase in emissions would be detrimental to the affected ecosystems inland of the ECA because of impacts on visibility, ecosystem health, tree biomass production, acidification, and other issues.

We will continue our dialogue with CLIA to investigate how to address these issues and to potentially consider other approaches. More broadly, we will continue to exercise flexibility as we seek innovative methods for ships operating within the North America ECA to achieve equivalent emission reductions at lower cost.

Again, thank you for your letter. If you have further questions please contact me or your staff may call Patricia Haman in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2806.

Sincerely,



Gina McCarthy
Assistant Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-06-001-1039

JUL 25 2006

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office's (GAO) report recommendation on the e-Rulemaking initiative. The report is entitled Electronic Rulemaking: Progress Made in Developing Centralized E-Rulemaking System (GAO-05-777). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

To learn from how EPA managed the Electronic Rulemaking initiative and to build on the success of it, GAO recommends that the Administrator of EPA, as managing partner of this initiative, take steps to ensure that the written agreements between EPA and the participating agencies include performance measures that address issues such as system performance, maintenance, and cost savings. These measures are necessary to provide criteria for evaluating the effectiveness of the e-Rulemaking initiative as well as for determining if the initiative is operating in the most efficient and economical manner.

EPA Response

EPA agrees with the recommendation. EPA will include in our agreements with other agencies performance measures that address system performance, maintenance agency usage, and other useful indicators. As the measures are developed and refined, we will add them in annual agreements between the e-Rulemaking Initiative and participating agencies. In addition, EPA anticipates that system performance and

maintenance data will support future efforts of the e-Rulemaking Initiative's Project Management Office and the Initiative's governing bodies to assess and develop ways to operate the system in the most efficient and economical manner.

Thank you for the opportunity to respond to the recommendation. If you have any questions, please contact me or have your staff contact Reynold Meni in EPA's Office of Congressional and Intergovernmental Relations at 202/564-3669.

Best wishes,

Lyons Gray
Chief Financial Officer

SUSAN M. COLLINS
MAINE

461 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1904
(202) 224-2823
(202) 224-2693 (FAX)

COMMITTEES:
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, CHAIRMAN
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-1904

AL-06-001-0779

CCU
Charles
Stephanie
John
Catherine
Cheri

25 Sweden Street, Suite A
Caribou, ME 04736
June 28, 2006

Ms. Stephanie Daigle
Associate Administrator for Congressional
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Dear Ms. Daigle:

I am writing on behalf of Bob Cyr, Mark Cyr and Greg McEuen, the owners of B&M Mini Trucks in Madawaska, Maine who contacted Senator Collins with problems they are experiencing with the importation of mini-trucks into the U.S. They have further questions related to a conference call their lawyer Mr. Harvey Fox held with EPA staff Karl Simon, Josh Lewis and Khesha Jennings.

I am providing an email with this letter from Mr. McEuen which outlines the conference call and Mr. McEuen's questions.

Mr. McEuen would like to have proof from EPA that the kei (mini) trucks that his company imports are indeed capable of use on U.S . Highways.

Mr. McEuen would like to have EPA written instructions on EPA requirements which would allow his trucks to enter the U.S. commerce.

Mr. McEuen would like to have EPA's environmental rational for restricting the entry of his trucks. He would like EPA to re-evaluate its current restrictions to his trucks being permitted to enter the U.S. Commerce.

Thank you for your time and efforts on behalf of Senator Collins and her constituents. You may respond to Senator Collins directly at the above address. If you have further questions feel free to contact me by email phil_bosse@collins.senate.gov or (207) 493-7873. I look forward to your response.

Sincerely,

Philip R. Bosse
State Office Representative for
Senator Susan M. Collins

attachment

Bosse, Phil (Collins)

From: Greg [greg@bandmminitrucks.com]

Sent: Friday, June 09, 2006 1:21 PM

To: Bosse, Phil (Collins); 'Hayslett, Barbara'; 'Merrill, Leslie'; Campbell, Sharon (Snowe); repross.paradis@legislature.maine.gov; Ford, Bob (Crapo); Moncibaiz, Michael (HSGAC)

Cc: 'Reggie Ferguson'; 'Marv & Patty Hagedorn'; drpowell@arkansas.net; 'Harvey Fox'

Subject: Meeting with EPA

Greetings,

Here is the info we have received on the events of the Weds June 7th meeting with EPA. Here is what happened:

From Harvey Fox our Attorney:

Dear Colleagues,
As previously discussed (see below), today we had a telephone conference with Karl Simon (Director, Compliance and Innovative Strategies Division in EPA (the office in which Robert Doyle works)) and Josh Lewis of EPA's Office of Congressional Affairs. Robert Doyle and his supervisor, Khesha Jennings, also participated.

Per our plan, we first argued that EPA should apply the 2nd or 3rd criterion to make the Kei class trucks non-motor vehicles, on the basis of the lack of safety features (e.g., side impact, roof crush resistance). Doyle and Jennings said that the way they approach these standards is, basically, to look at the overall features of the vehicle and if those features don't seem to preclude highway use, they treat them as "motor vehicles." Doyle referred to internet ads describing the vehicles as having headlights, seatbelts, and other safety features. However, both Doyle and Jennings appear to confuse the safety features with the 25 MPH limitation, referring to "big engines" in the trucks that make them capable of higher speeds.

Although we argued for application of the DOT safety features, pointing out that those features are required by statute to be applicable in the states, EPA's bottom line is that, according to them, they have not approved a Kei class truck over a long period and do not plan to do so. In fact, at the conclusion of the conference, I asked what evidence or modifications it would take to exclude a Kei class truck under the 2nd criterion. They said that they did not see how it could be done.

I would ask that you as our Representatives and Senators, demand PROOF from EPA that these vehicles can be used on US Highways. They keep insisting they can be, where as DOT says they cannot be. In addition I would like to know exactly in writing what EPA says we need to do to meet the criteria.

"The vehicle lacks features customarily associated with safe and practical street or highway use, such features including, but not being limited to, a reverse gear, a differential, OR SAFETY FEATURES REQUIRED BY STATE AND/OR FEDERAL LAW.

These guys at EPA keep IGNORING the TRUTH of the matter. ACCORDING TO DOT, THE GOVERNING AGENCY FOR VEHICLE USE ON US HIGHWAYS AND ROADS, THESE VIHICLES DO NOT MEET THE STANDARDS.

It urks me to no end that EPA is making a NON-ENVIRONMENTAL decision, and superseding DOT. I would also like to know THE ENVIRONMENTAL ARGUMENT.

Please use whatever influence, pull, you have to insist EPA re-evaluate their current conclusions.

Again, Thank you for all your help.

Greg McEuen

MR For Report

MR. McEuen Questions

Overview,

Thank you for your help in getting our Request for Internal Advise released from Long Beach. I am told this document is now headed to the Commissioner of Customs for review as should have been done weeks ago. Again thank you.

I am writing this to better help us understand the issues with EPA.

We have two players in this situation. DOT/NHTSA and EPA.

As I understand it, DOT/NHSTA is responsible for rule making for vehicles that are used on US highways and roads, They are the deciding organization on what can and cannot be used on a US Road. They also decide what safety equipment is necessary etc..

EPA's responsibility lies with the environment. They are chartered to help keep pollution/pollutants under control.

At this point here is the issue:

DOT/NHSTA has determined that these Kei Class vehicles from Japan do not meet the standards necessary to be road worthy. They lack the safety and other equipment necessary to be legally licensed for use on US Roads.

EPA claims that these vehicles can be used on the US roads in the US. (We ask them to PROVE this assumption). They make this claim based on the manufactured use of the vehicle in the country of origin. Not the Intended use of the Vehicles in the USA. Now there are many items that are manufactured for one kind of use in one country and imported and used for an entirely different use in the USA. EPA should not be looking at USE in other countries. Their Job is to look at USE in the USA. In addition EPA is an Environmental agency and should NOT be determining how a vehicle is being used. They SHOULD be determining whether a vehicle is polluting or in danger of polluting in the USA. EPA is misinterpreting its own rules and ignoring the rules as set by DOT/NHTSA. To be specific:

EPA states that for these vehicles to be classified as an Off Road (NON-Road) use only vehicle they must meet **ONE** of three criteria.

1. The vehicle lacks features customarily associated with safe and practical street or highway use, such features including, but not being limited to, a reverse gear, a differential, OR SAFETY FEATURES REQUIRED BY STATE AND/OR FEDERAL LAW. or
2. The vehicle exhibits features which render its use on a street or highway UNSAFE, IMPRACTICAL, or HIGHLY UNLIKLY, such features including, but not being limited to, tracked road contact means, and inordinate size, or features ordinarily associated with military combat or tactical vehicles such as armor and/or weaponry. or
3. The vehicle cannot exceed a maximum speed of 25 miles per hour over level paved surfaces.

Now it is clear we DO meet requirement number 1. As these vehicles do NOT meet "SAFETY **FEATURES** REQUIRED BY STATE AND?OR FEDERAL LAW" as DOT/NHTSA has defined them. However EPA has decided to ignore the DOT/NHTSA rules.

We also believe we meet requirement number 2. Our vehicles are "UNSAFE, IMPRACTICAL" to be used on USA roads. They are lacking required safety equipment and are impractical, due to the right hand drive, speedometer in KM instead of MPH, lack of horsepower, a low laden speed, and low acceleration. Again EPA ignores DOT/NHTSA rules and recommendations on this item.

However EPA does refer to "STATE AND/OR FEDERAL LAW" in item 1. So if they are not referring to DOT/NHTSA then what are they referring too??

Again, it is clear we meet ONE requirement. But EPA goes against its own rules and is forcing us to meet at least 2 if not all 3 requirements.

EPA maintains a position that they classify a vehicle based on the manufactured use of the vehicle in the country of Origin. You received our legal argument on this point. You have also seen that EPA ignores the whole rule, and uses only parts of the rule for its current decision.

As to the question of manufactured use of these vehicles; These vehicles are manufactured in Japan and other countries for a specific use. A use we do NOT have in the USA. This use is for highly congested NARROW road systems. These vehicles were not manufactured for road use on roads the same size as those in the USA. Therefore the intended manufactured use of these vehicles is for a system of roads that DO NOT EXIST in the USA. Again EPA ignores this fact.

It is our feeling that we are compliant with EPA standards as they are presented.
It is our opinion that DOT/NHTSA is correct in their determination of these vehicles being of unsafe use for USA roads.
IT is our finding that these vehicles were Manufactured for a specific market/intent that does not exist in the USA
It is our belief that EPA should be in the business of the ENVIRONMENT, not the business deciding what a ON or OFF road vehicle is.

EPA needs to issue a determination in our favor. THESE VEHICLES MEET EPA REQUIREMENTS as defined.

US Customs Import Specialist Long Beach (Danny Johnson) and Portland, Maine Import Specialist (John Foley) have taken the position that EPA is the governing factor. Even though DOT/NHTSA has determined these vehicles to be for off road only use. These two individuals claim that we fall under a highway or road use tariff. When in reality we do not. DOT/NHTSA decides what a road or off road vehicle is. NOT CUSTOMS OR EPA. These two continue to use there power and influence to try and persuade the EPA to their liking. THIS IS WRONG!!!

It is critical that you as our Representatives and Senators drive these facts to the EPA Administrator.
This issue could get very inflated if EPA decides not to follow the rules and regulations of DOT/NHTSA.

Again thank you for all your help.

Greg McEuen
General Manager
B & M Mini Trucks & Tractors
(207) 433-0384
greg@bandmminitrucks.com
www.bandmminitrucks.com

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 17 2006

OFFICE OF
AIR AND RADIATION

The Honorable Susan Collins
United States Senator
25 Sweden Street, Suite A
Caribou, Maine 04736

Dear Senator Collins:

Thank you for your letter of June 28, 2006, on behalf of your constituents Bob Cyr, Mark Cyr, and Greg McEuen, owners of B&M Mini Trucks regarding the importation of mini trucks into the United States. I appreciate your interest in this issue.

Staff in the Environmental Protection Agency's (EPA) Office of Transportation and Air Quality spoke directly with Mr. McEuen on August 3, 2006, to discuss the issues outlined in your June 28, 2006, letter to EPA. In addition, we have also contacted Mr. Philip Bosse in your Caribou, Maine State office to inform him that we have spoken with Mr. McEuen.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2095.

Sincerely,

William L. Wehrum
Acting Assistant Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-06-001-4193

SEP 21 2006

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office's (GAO) report recommendations on protecting the nation's drinking water from lead contamination. The report is entitled Drinking Water: EPA Should Strengthen Ongoing Efforts to Ensure That Consumers Are Protected from Lead Contamination (GAO-06-148). EPA prepared this response pursuant to 31 U.S.C. 720.

EPA has reviewed and considered implementing the recommendations for reducing lead in drinking water. We reviewed them in context with other activities for supporting regulatory and implementation needs for the national drinking water program, and our response is as follows.

GAO Recommendation

GAO recommends that the Administrator, EPA, take a number of steps to further protect the American public from elevated lead levels in drinking water. Specifically, to improve EPA's ability to oversee implementation of the lead rule and assess compliance and enforcement activities, EPA should:

- Ensure that data on water systems' test results, corrective action milestones, and violations are current, accurate, and complete; and

- Analyze data on corrective actions and violations to assess the adequacy of EPA and state enforcement efforts.

EPA Response

EPA agrees with the recommendation. EPA believes complete and accurate compliance information from public water systems and states is critical to the successful implementation and enforcement of the Lead and Copper Rule (LCR). The Agency will continue to work closely with states to ensure relevant LCR information is loaded into the Safe Drinking Water Information System (SDWIS). This information includes complete and accurate data on test results, corrective actions, milestones and violations.

In addition, EPA included additional questions in the protocol for data verification audits of state Public Water System Supervision programs to help better access LCR compliance. The protocol directs a review on the accuracy and completeness of information in the files, and appropriate state and utility followup when exceeding lead action levels. To date, this increased oversight has improved state compliance with the regulations. Collectively, EPA's Offices of Water and Enforcement and Compliance Assurance assess the success of the enforcement program and make necessary adjustments, as needed.

GAO Recommendation

To expand ongoing efforts to improve implementation and oversight of the lead rule, GAO recommends that EPA should reassess existing regulations and guidance to ensure the following:

- the sites water systems use for tap monitoring reflect areas of highest risk for lead corrosion;
- the circumstances in which states approve water systems for reduced monitoring are appropriate and that systems resume standard monitoring following a major treatment change;
- homeowners who participate in tap monitoring are informed of the test results;
- states review and approve major treatment changes, as defined by EPA, to assess their impact on corrosion control before the changes are implemented.

EPA Response

EPA agrees with the recommendation and proposed short-term LCR revisions on July 18, 2006. The revisions reflect the issues cited in the recommendation. EPA will release final guidance on evaluating the potential effects of treatment changes on corrosion control in 2007. The guidance will assist states and water systems in evaluating the possible effects of these changes.

GAO Recommendation

GAO recommends EPA should collect and analyze data on the impact of lead service line replacement on lead levels and conduct other research, as appropriate, to assess the effectiveness of lead line replacement programs and whether additional regulations or guidance are warranted.

EPA Response

EPA agrees with the recommendation and will consider the impact and effectiveness of lead line replacement for long-term changes to the LCR and guidance. We will use the most current data available when reviewing the LCR, including results of research by the American Water Works Association Research Foundation (AwwaRF) on lead service line replacement practices. In addition, EPA is considering updating its *Notification and Reporting Guidance for Partial Lead Service Line Replacement* (2000). The revision would cover lead service line replacement issues, including best practices related to materials inventory management and actions to reduce lead spikes and temporary lead level elevations following partial or full service line replacement. Professionals involved with lead service line replacement requested EPA add guidance on implementing effective placement programs, and we acknowledge this need.

GAO Recommendation

GAO recommends EPA should collect information on (1) the nature and extent of modified sampling arrangements within combined distribution systems and (2) differences in the reporting practices and corrective actions authorized by the states, using this information to reassess applicable regulations and guidance.

EPA Response

EPA agrees with the recommendation. EPA recognizes the inconsistencies in managing combined distribution systems among state programs and will examine the issue when considering longer-term changes to the LCR. Current data collection and assessment efforts underway on combined distribution systems will support compliance with the Stage 2 Disinfection Byproducts Rule. The rule, released in January 2006, requires systems to evaluate their combined distribution systems to identify the most appropriate monitoring locations for compliance with the rule.

GAO Recommendation

GAO recommends EPA should evaluate existing standards for in-line and endpoint plumbing devices used in or near residential plumbing systems to determine if the standards are sufficiently protective to minimize potential lead contamination.

EPA Response

EPA agrees it is important to review the standards. In July 2005, EPA convened a workshop for experts to discuss the standards for plumbing devices and their potential for lead leaching. Since that time, the National Sanitation Foundation (NSF)/American National Standards Institute Standard 61 (in-line devices) were revised to address lead leaching issues associated with the waters used to test the plumbing devices. EPA participates in a task group conducting more comprehensive reviews of Standard 61 which will make recommendations to the NSF Drinking Water Additives Joint Committee on potential revisions to the standard for in-line and endpoint devices.

AwwaRF has two ongoing evaluations that will influence future changes to the LCR. First, one study is evaluating the performance of non-leaded brass materials[1] and will provide useful information to Congress when considering possible changes to statutory language on the lead content of materials in contact with drinking water. The study is scheduled for completion in 2007. The second is a research project to assess the sufficiency of existing standards controlling leaching from plumbing materials.[2] It is scheduled for release in 2008. However, in the interim, EPA will continue to work with NSF on evaluating the preliminary results from the studies and the efficacy of existing requirements.

GAO Recommendation

In order to update its guidance and testing protocols, GAO recommends EPA collect and analyze the results of any testing that has been done to determine whether more needs to be done to protect users from elevated lead levels in drinking water at schools and child care facilities. In addition, to assist local agencies in making the most efficient use of their resources, EPA should assess the pros and cons of various remediation activities and make the information publicly available.

EPA Response

EPA agrees with the intent of the recommendation. EPA has clear regulatory authority over schools that are also considered public water systems; however, from a regulatory and resource perspective, EPA does not have the authority to require a widespread data collection on the quality of drinking water in schools that are not regulated by the Safe Drinking Water Act. While EPA believes children's exposure to lead from all potential sources should be reduced, EPA is committed to a voluntary campaign to encourage broader testing of drinking water in schools and child care facilities.

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[1] AwwaRF study – Performance and Metal Release of Non-Leaded Brass Meters, Components and Fittings, Project #3112

[2] AwwaRF study – Contribution of Service Line and Plumbing Fixtures to Lead and Copper Rule Compliance Issues, Project #3018

To assist schools and child care facilities in testing for and remediating lead levels, EPA released a revised guidance in December 2005 on how to conduct tests for lead in drinking water and implement remediation activities when elevated lead levels are found at schools. EPA is developing additional educational materials on these issues to assist schools and is making information available on a new website (www.epa.gov/safewater/schools.) In addition, through a June 2005 Memorandum of Understanding on Lead and School Drinking Water, EPA, the Department of Education and other partners have committed to promote assistance to schools on reducing possible lead levels by revising guidance and other instruction materials.

EPA continues to improve public health through national implementation of the LCR. As EPA considers the GAO recommendations in the future, activities to address them may change. In late 2005, EPA considered that the LCR public education requirements may not fulfill the public's needs and requested the National Drinking Water Advisory Council to recommend changes. The Council made several recommendations and we incorporated them in the proposed LCR revisions. With additional Council recommendations issued to the Administrator in August 2006, we plan to initiate significant revisions to our existing public education guidance later this year.

Thank you for the opportunity to respond to the recommendations. If you have any questions, please contact me or have your staff contact Lauren M. Mical in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2963.

Best wishes,

Lyons Gray
Chief Financial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-06-001-4265

SEP 20 2006

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office (GAO) report recommendations concerning payment by businesses for environmental cleanup efforts. The report is entitled Environmental Liabilities: EPA Should Do More to Ensure That Liable Parties Meet Their Cleanup Obligations (GAO-05-658). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

To close gaps in financial assurance coverage that expose the government to significant financial risk for costly environmental cleanups, GAO recommends that the EPA Administrator should expeditiously implement the statutory mandate under Superfund to develop financial assurance regulations for businesses handling hazardous substances, first addressing those businesses EPA believes pose the highest level of risk of environmental contamination, as the statute requires.

EPA Response

EPA continues to study and evaluate the issue of financial assurance coverage, including to what extent these risks should be addressed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as part of its response to the Agency's report entitled Superfund: Building on the Past, Looking to the Future issued April 2004 (Superfund 120-Day Study). In addition, EPA has requested that the Environmental Financial Advisory Board (EFAB) review a number of questions about financial assurance that would also assist EPA in decisions regarding a CERCLA section 108(b) rulemaking. The EFAB has already provided its recommendations on self insurance through a financial test, and next will be reviewing insurance. Both self insurance and insurance are listed in CERCLA 108(b) as

mechanisms for providing financial assurance. The Agency will use this information to determine if rulemaking is necessary.

GAO Recommendation

To better ensure that the financial assurances EPA requires under the Superfund and Resource Conservation and Recovery Act (RCRA) corrective action programs provide sufficient funds for cleanups in the event liable parties do not fulfill their environmental obligations, GAO recommends that EPA should enhance its efforts to manage and enforce the financial assurance requirements for Superfund and RCRA corrective action cleanups by taking the following actions (Parts A – E):

GAO Recommendation (Part A)

Evaluate the financial assurance the Agency accepts in light of such factors as the financial risks EPA faces if liable parties do not meet their cleanup obligations; the varying financial risks posed by the individual financial assurance mechanisms; the Agency's capacity to effectively oversee the various financial assurance mechanisms – in particular, the expertise of staff (federal and state) and the number of staff; the information gaps the Agency faces in overseeing the various financial assurances; and the concerns about certain financial assurances, such as the corporate financial tests, corporate guarantees, and captive insurance, that have been brought to the Agency's attention by state regulators, the EPA Inspector General, and others.

EPA Response (Part A)

EPA agrees with this recommendation and will evaluate these issues. Our continuous evaluation of financial assurance issues is integral to improving the management and enforcement of these requirements. In addition, we welcome the efforts of stakeholders and the EFAB to improve the financial assurance program.

Currently, EPA is analyzing issues relating to the recommendation, including which sites pose the greatest financial risk to EPA and the States. EPA believes the analysis regarding rulemaking for CERCLA financial assurance will include elements described in the recommendation. The recommended action is consistent with recommendations in the Agency's Superfund 120-Day Study. EPA is committed to carrying out the Study's recommendations, including an evaluation of the impact of RCRA and other sites on the Superfund program, examining different approaches to financial assurance under RCRA, and considering whether financial assurance regulations should be developed under CERCLA section 108(b) for facilities not currently subject to financial assurance under RCRA.

We are reviewing information to determine additional actions needed to improve the financial assurance program. This information includes the findings and recommendations of the 120-Day Study, as well as the EFAB's recommendations on the financial test, previous analyses

supporting prior financial assurance rulemaking efforts, and ongoing compliance and enforcement activities.

The information gaps and oversight expertise issues EPA faces in implementing financial assurance requirements are discussed in response to recommendations Parts D and E below.

GAO Recommendation (Part B)

If EPA continues to accept the corporate financial tests and corporate guarantees as financial assurance in these programs, it should revise and update its financial tests to address the deficiencies identified by the EPA Inspector General and others.

EPA Response (Part B)

While EPA recognizes that changes to the financial test and corporate guarantee may be appropriate, a decision to accept and/or revise the financial test and corporate guarantee will be based on additional analysis of the existing financial test and corporate guarantee. The report identifies many issues on which we have sought advice from the EFAB. EFAB has made recommendations to EPA on the financial test and corporate bond ratings. EFAB continues to work on financial assurance issues and will submit additional findings and recommendations to EPA. We are also reviewing the analyses resulting from the Superfund 120-Day Study and information collected through OECA's financial assurance national priority initiative. We will consider information gathered from these sources as we develop a strategy specific to this recommendation.

GAO Recommendation (Part C)

Implement changes to Superfund and RCRA databases to support the efficient identification of EPA's portfolio of financial assurances and populate these databases with information on all financial assurances that liable parties should have in force, developing quality controls to ensure data reliability.

EPA Response (Part C)

EPA agrees with this recommendation. EPA has already made changes to the Superfund Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) database and will incorporate changes in the next upgrade of RCRAInfo. See discussion below for description of changes made to CERCLIS and changes planned for RCRAInfo.

CERCLIS has been enhanced to identify the type of financial assurance mechanism, the name of the issuer or provider of the mechanism and the dollar amount of the mechanism. A financial assurance tab also has been added to the Enforcement Instrument module in CERCLIS/WasteLAN for financial assurance information associated with a CERCLA settlement

or order. The new enhancement will allow users to select multiple financial assurance mechanisms, link the financial assurance issuer to the financial instrument, and identify the value of each financial mechanism.

In addition, a new reporting tool, the Enforcement 67 Report, has been developed to capture and track the specifics of the financial assurance provided by responsible parties. The Enforcement 67 Report draws financial assurance data from CERCLIS and allows the user to sort by year, by response settlements (i.e., response settlements with financial assurance and/or response settlements without financial assurance), and by the value of work. Additionally, the report will include the name(s) of the party(ies) responsible for providing the financial assurance.

Information from the Enforcement 67 Report will be used to determine the compliance of responsible parties with their financial assurance obligations and evaluating the adequacy of financial assurance mechanisms. The aggregate liabilities of companies having liability at multiple Superfund sites may be evaluated. This information may be used to determine the extent of a responsible party's financial assurance obligations nationwide and especially useful in evaluating a responsible party's use of the financial test or corporate guarantee. The ability to capture and track financial assurance data in CERCLIS will assist Headquarters and Regions to manage the financial assurance program effectively.

EPA is also updating RCRAInfo, a result of the EPA/State Waste Information Needs/Information Needs for Making Environmental Decisions (WIN/INFORMED) initiative. RCRAInfo is the hazardous waste program's information system providing access to data concerning, among other things, hazardous waste treatment, storage and disposal facilities (TSDFs) subject to RCRA Subtitle C. The enhancements to RCRAInfo will create a more detailed set of information in the Compliance Monitoring and Enforcement (CME) module regarding the type of financial assurance violation and two data tables in the Permits and Corrective Action module. These tables capture financial assurance information for TSDFs concerning basic "coverage" (i.e., addressing the type of financial assurance that a TSDF is required to have) and the "mechanism" (i.e., the type of financial assurance [e.g., letter of credit, surety bond] selected by the facility). The RCRAInfo Design Team will develop quality controls, such as edit checks and disallowing data saves without all of the required inputs, to ensure data reliability. Gathering and monitoring this information supports tracking TSDF financial assurances.

GAO Recommendation (Part D)

Develop a strategy to effectively oversee the agency and state portfolios of financial assurances to ensure that all required financial assurances are in place and sufficient in the event the related businesses encounter financial difficulties, including bankruptcy. Such a strategy should include ensuring that adequate staffing resources with relevant expertise are available.

EPA Response (Part D)

EPA generally agrees with this recommendation and is continuing to enhance the implementation and oversight of financial assurance commitments presently. The Office of Enforcement and Compliance Assurance (OECA) and the Office of Solid Waste and Emergency Response (OSWER) are responsible for these improvements.

To implement the financial assurance enforcement priority, OECA developed a strategy with specific goals, including the targeting of enforcement resources, a communication strategy, and capacity building. OECA also provides tools, such as model settlement language, for Regions' and States' reference in implementing financial assurance commitments. One such example is discussed below in response to the recommendation (Part E). In addition, OECA has developed and continues to develop "tip sheets" and sample financial assurance documents to assist Regions in implementing and enforcing financial assurance requirements. OECA is continuing to deliver training on financial assurance mechanisms and cost estimating for State and Regional personnel.

OECA has also begun a series of reviews of financial assurance mechanisms in numerous States and Regions. This effort allows OECA to analyze information from the reviews and will assist in identifying additional training opportunities, as well as additional enforcement guidance, tools, and resources to help Agency and State personnel implement and enforce financial assurance commitments.

OSWER is actively involved with three initiatives to ensure that Regions effectively oversee States' financial assurance portfolios. These initiatives include developing programs for additional oversight on financial assurance, advising States and Regions to examine financial assurance cost estimates and instruments carefully during five-year permit reviews, and seeking cooperation of State partners who are authorized for the RCRA program to identify best practices. OSWER will then act as a clearinghouse for sharing these practices across all States and Regions.

GAO Recommendation (Part E)

Require that financial assurances be in place before EPA and liable parties finalize Superfund settlement agreements.

EPA Response (Part E)

On August 15, 2005, EPA's Office of Site Remediation Enforcement (OSRE) and the Department of Justice (DOJ) issued revised financial assurance language for the CERCLA model Remedial Design/Remedial Action (RD/RA) Consent Decree. The revised language clarifies and strengthens a number of financial assurance requirements applicable to settling defendants in the model CERCLA settlement, including changes to the timing of establishing financial assurance.

Under the old model, a settling defendant was required to establish financial assurance within 30 days of entry of the Consent Decree, whereas the new model calls for discussions and negotiations of financial assurance to occur earlier in the process. The revised model provides the following:

1. The settling defendant(s) and EPA must agree on the form and substance of the financial assurance mechanism prior to the execution of the Consent Decree.

2. The agreed upon form of financial assurance will be attached to the Consent Decree as an exhibit.

3. Within ten days after entry of the Consent Decree, the settling defendant(s) must execute or otherwise finalize all instruments or other documents required in order to make the selected financial assurance mechanism legally binding and fully effective in a form substantially identical to the documents attached to the Consent Decree as exhibits.

4. Within 30 days of entry of the Consent Decree, settling defendant(s) shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance mechanism legally binding to EPA.

It is important to note that courts, and not EPA or the settling defendants, control the entry dates of Consent Decrees. Therefore, it would be extremely difficult to make the effective date of a financial assurance mechanism concurrent with entry of the Consent Decree or earlier. The approach taken by DOJ and EPA through the revised model language limits the financial risk to the United States by ensuring that the form and substance of the financial assurance are finalized prior to execution of a Consent Decree and shortening the time period to 10 days after entry of the Consent Decree for the settling defendant to make the agreed upon financial assurance mechanism effective.

Now that the model RD/RA Consent Decree is revised, EPA is making conforming changes to the model Removal Administrative Order on Consent (AOC). EPA intends to make conforming changes to the model Remedial Investigation/Feasibility Study AOC in Fiscal Year 2006. These revised models will provide guidance to EPA staff in negotiating site-specific agreements.

GAO Recommendation

To better ensure that EPA holds liable parties responsible for their cleanup obligations to the maximum extent practicable, the agency should seek opportunities to more fully use its enforcements tools, particularly tax and other offsets, and provide specific guidance to their staff on how and when to use these tools. For example, EPA should routinely take advantage of tax offsets when liable parties are not meeting their obligations—not just when parties file for bankruptcy.

EPA Response

EPA is not aware of any government-wide system that tracks all existing or potential payments owed by the Federal government. EPA cannot uniformly pursue an offset without coordination and cooperation with other Federal agencies. EPA may not know of an existing tax refund due to privacy requirements that may prevent the Internal Revenue Service from sharing tax information with other agencies. EPA is considering additional information the Agency can seek from potentially responsible parties to evaluate the potential for offsets (i.e., CERCLA 104(e) information requests). In order to successfully set-off an environmental debt against a government obligation, EPA will need assistance and cooperation of other government agencies.

GAO Recommendation

To better ensure that EPA identifies relevant bankruptcy filings to pursue and bankruptcy action to monitor, EPA should develop a formal process for monitoring bankruptcy proceedings and maintain data on bankruptcy filings reviewed, for example using an EPA Intranet site that would be readily available to all relevant staff.

EPA Response

In May 2005, OSRE issued the "Interim Protocol for Coordination of Bankruptcy Matters under the Comprehensive Environmental Response, Compensation, and Liability Act," (hereinafter "EPA Bankruptcy Protocol," or "the Protocol") which addresses the concerns addressed by this recommendation. The Protocol provides a formal internal agency guidance for managing multi-Regional bankruptcies.

The Bankruptcy Workgroup is exploring the possibility of and necessary steps required to use a bankruptcy tracking system developed in Region III on a nationwide basis. The database tracks all bankruptcies that come into the Region, even those in which the Agency does not file a claim. In making careful resource management decisions, it is not reasonable for the Agency to track and evaluate all bankruptcy filings where EPA receives no notice of the bankruptcy. The amount of resources needed to undertake such a task would not likely result in a corresponding significant rise in the number of bankruptcy claims filed on behalf of the Agency.

In addition to the database, Region III has had a bankruptcy protocol in place since May 2003 that provides for a formal decision not to pursue a bankruptcy case. The Region III protocol calls for a "close out" memo documenting the efforts to discover potential claims and the result. This memo provides the basis for not pursuing a claim (*e.g.*, no claims discovered, debtor assets too insignificant to pursue, transaction costs would exceed expected recovery, etc.). The information collected pursuant to the Region III protocol provides sufficient documentation to justify and explain the Agency's decision to pursue or not pursue a claim in a particular bankruptcy. This close out process is a natural outgrowth of the recent EPA Bankruptcy Protocol (May 2005).

GAO Recommendation

GAO recommends that EPA revise and update its guidance on participation in bankruptcy cases to more clearly identify some action needed to better protect the government's interest, such as steps to take to better ensure that the courts do not inappropriately discharge environmental liabilities and to specify that staff evaluating new bankruptcy filings should routinely determine whether EPA has any existing liens related to the filings.

EPA Response

We believe that EPA has already addressed this recommendation. Specifically, the Agency's bankruptcy practice has evolved over the years, as Regional and Headquarters staff have developed significant expertise in bankruptcy matters. As noted above, OSRE issued the EPA Bankruptcy Protocol in May 2005 that provides guidance for managing multi-Regional bankruptcies. The Protocol directs relevant staff attorneys working on each bankruptcy matter to thoroughly investigate the debtor's environmental liability for Superfund and RCRA corrective action sites. This analysis includes a determination of whether EPA has an existing lien regarding the site. EPA is committed to modifying the guidance, as appropriate.

Thank you for the opportunity to respond to the recommendation. If you have any questions, please contact me or have your staff contact Lauren M. Mical in EPA's Office of Congressional and Intergovernmental Relations at 202-564-2963.

Best wishes,

Lyons Gray

Lyons Gray
Chief Financial Officer

AL-06-002-0645

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 15 2005

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office (GAO) report recommendation on the progress of climate change voluntary programs. The report is entitled Climate Change: EPA and DOE Should Do More to Encourage Progress Under Two Voluntary Programs (GAO-06-97). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

GAO recommends that both EPA and DOE develop written policies establishing the consequences for not completing program steps on schedule.

EPA Response

Given the differences in the size and complexity of firms (Partners) participating in the EPA Climate Leaders Program, EPA believes that a public written policy establishing consequences for not meeting program steps on a specified schedule would be detrimental to recruiting companies to undertake the significant voluntary effort necessary to meet the program requirements. As the report discussed, participating companies are aware of the program requirements and generally meet them proactively.

EPA tracks implementation progress continuously by internal inventory tracking and reporting and analysis of goal tracking spreadsheets. The tracking mechanisms quickly identify firms not progressing satisfactorily. In addition, EPA conducts monthly conference calls with participating Partners to discuss progress and identify issues that may prevent completing program reporting requirements on time.

Since the Climate Leaders Program began in 2002, we have found that it takes about one year from the date a Partner joins the program, on average, to develop a high-quality long-term climate change strategy and to complete the base year reporting requirements. EPA recognizes some Partners may require additional time to complete the requirements due to mergers and acquisitions, complexity of calculating emissions from some sources and sectors, data availability, or other issues.

When a firm is not acting in good faith and not completing program requirements in a timely manner, EPA proactively takes corrective action, as the GAO report highlights. In these rare cases, EPA 1) telephones the Partner to re-invigorate the process; 2) sends an official letter to the Partner to urge them to act more expeditiously; and 3) removes them from the program. To date, EPA has sent two official letters to Partners to re-engage them in meeting program requirements. EPA has detailed these action steps in an internal policy, as GAO recommended, and will apply them when a Partner is not progressing in completing program requirements in a timely manner.

Thank you for the opportunity to respond to the recommendation. If you have any questions, please contact me or have your staff contact Lauren Mical in EPA's Office of Congressional and Intergovernmental Relations at 202/564-2963.

Best wishes,

Lyons Gray

Lyons Gray
Chief Financial Officer

SUSAN M. COLLINS
MAINE

461 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1904
(202) 224-2523
(202) 224-2693 (FAX)

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES:
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, CHAIRMAN
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

AL-07-000-8201

68 Sewall Street Room 507
Augusta, ME 04330
May 10, 2007

Mr. Edward Krenik
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Room 3442 North
Washington, DC 20460

Dear Mr. Krenik:

Senator Susan Collins's Augusta office was contacted by the Kennebec Valley Young Marines. They are planning to hold their week-long encampment from July 21-28 at the Maine National Guard's Bog Brook Training facility in Gilead, Maine.

The encampment will offer youth opportunity for skill development, physical fitness, and personal development in a safe, outdoor environment under the supervision of qualified adult leaders. The program is open to boys and girls aged 8 through high school. The Young Marines have contacted Senator Collins's office to see about securing outside speakers with hands-on demonstrations and/or educational activities that could make the week even more meaningful. It is my hope that someone in the EPA may be available with a presentation that could excite and inspire the youth of central Maine. Young Marines contact: Corey Labbe, 207-441-4136.

Thank you for all of your help in this matter. Do not hesitate to call me should you have any questions.

Sincerely,

Charles L. Mahaleris
Staff Assistant to
Susan M. Collins
United States Senator

United States Senate

WASHINGTON, DC 20510

AL-09-001-7091

November 4, 2009

Honorable Lisa P. Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Room 3000
Washington, DC 20460

Dear Administrator Jackson:

On Monday, the Ranking Members of the Senate committees with jurisdiction over aspects of climate change legislation expressed their concern that the Senate Environment and Public Works (EPW) Committee is proceeding with a markup of S.1733 without a clear picture of the bill's impacts on our economy. Earlier this year, Senator Voinovich requested this information from your agency. We share the concerns of our colleagues and encourage you to expeditiously provide the information requested by Senator Voinovich and other Republicans.

As Senators interested in a bipartisan approach to addressing climate change and energy independence this Congress, we have a keen interest in ensuring that cost estimates, models, and other data critical to the legislative process be made available to members of Congress and the public in a timely manner. We cannot support legislation without this information.

Climate change legislation will likely impact every aspect of our economy. We are committed to an open process in which information is readily available to our colleagues and the public. These data will be critical to informing our constituents about the impact of any bill and developing constructive amendments to improve the legislation. It is our request that you run the models previously requested on S. 1733 and provide the results to the public prior to any action in EPW.

We thank you for your attention to this matter and look forward to working with you as the Senate develops climate change and energy independence legislation.

Sincerely,

Lindsey O. Graham

Judd Gregg

Olympia Snowe

Susan Collins

Cc: Senators Boxer, Inhofe, Murkowski, Lugar, Chambliss, Hutchison, Grassley, Voinovich

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 12 2009

THE ADMINISTRATOR

The Honorable Susan Collins
United States Senate
Washington, DC 20510

Dear Senator Collins:

Thank you for your letter of November 4 about EPA's economic modeling of climate legislation.

On October 26, Senator John Kerry requested that EPA perform economic computer modeling of the draft energy and climate bill that now is being assembled for consideration by the full Senate. EPA has agreed to perform that analysis and to include in it the scenarios that Senator George Voinovich has requested. I am grateful to Senator Voinovich and his staff for the good faith that they brought to our discussions of EPA's economic modeling.

I do not know precisely when EPA will receive the legislative specifications that the agency will need in order to start its new analysis. I anticipate, however, that EPA will be able to begin its work before the middle of December. If so, then the agency will release its report before the end of January.

I hope that this information is helpful. Please do not hesitate to contact me or my staff with additional questions, and please accept my gratitude for your interest in a bipartisan approach to clean energy reform.

Sincerely,

Lisa P. Jackson

AL-10-000-2830

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

February 22, 2010

Via Email (spraul.greg@epamail.epa.gov)

The Honorable Peter S. Silva
Assistant Administrator for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Mr. Silva:

We would like to invite you to testify at a hearing titled "Chemical Security: Assessing Progress and Charting a Path Forward" before the Committee on Homeland Security and Governmental Affairs on Wednesday, March 3, 2010, at 10 a.m. in room SD-342 in the Dirksen Senate Office Building.

The purpose of the hearing is to discuss the progress of the Chemical Facility Anti-terrorism Standards program (CFATS) and how best to reauthorize the program. The committee held numerous hearings in 2006 detailing the possible harms of a terrorist attack on a facility that makes or uses dangerous chemicals. Congress subsequently authorized the Department of Homeland Security to begin a chemical site security program. Drinking and waste water facilities are currently exempt from the CFATS program. We would like you to discuss the current security requirements for water facilities and whether or not additional federal security regulations for these facilities are necessary. If so, what are the special considerations for regulating drinking and waste water facilities and what approach does the administration advocate?

The committee requests that you summarize your testimony in 10 minutes or less, although a longer written statement may be submitted for the official record. This will allow adequate time for you to engage in questions and answers with members of the committee. Committee rules require that your testimony be submitted by 10 a.m. on Monday, March 1, 2010. Please send your written statement and a brief biography via e-mail to the committee's chief clerk, Trina Tyrer, at *trina_tyrer@hsgac.senate.gov*.

We look forward to your participation in this hearing. If you have any questions, please contact Holly Idelson with the majority staff at 202-224-2627 or Rob Strayer with the minority staff at 202-224-4751.

Sincerely,

Joseph I. Lieberman
U.S. Senator

Susan M. Collins
U.S. Senator

AL-10-000-3728

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF THE
CHIEF FINANCIAL OFFICER

MAR 09 2010

The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

I understand you received a letter dated March 3, 2010 from EPA's Acting Inspector General that indicated a document was omitted from EPA's FY 2011 Congressional Justification. Enclosed is the March 3, 2010 letter as well as the omitted document that should have been included in EPA's FY 2011 Congressional Justification.

Consistent with direction that we received from OMB on how to handle such letters, our intention was to include the following in the Congressional Justification:

1. Reflect a statement in the narrative page of the Office of Inspector General's (OIG) budget justification indicating that a copy of the Acting Inspector General's official statement to the Director of the Office of Management and Budget (OMB) is included in the Appendix section of the Congressional Justification;

2. Highlight in the resources table of the program narrative the amount requested by the OIG; and

3. Include the OIG's letter dated December 9, 2009 from EPA's Acting Inspector General Bill Roderick to the Director of OMB reiterating OIG's request for an increase of $10 million to their budget.

The EPA Congressional Justification included the first two items but omitted the last item. The December 9, 2009 letter was cited in the EPA Congressional Justification (p.543) but was inadvertently left out of the Appendix section. In addition, the Appendix to the President's Budget included a reference to the OIG's letter (p. 1127) and also indicated that the letter would be included in the EPA Congressional Justification.

The letter's omission from the Congressional Justification was due to an accidental production error, and not a deliberate act. We updated the internet version of the Congressional Justification on February 2, 2010, available at http://www.epa.gov/budget/2011/fy_2011_congressional_justification.pdf.

If you have further questions, please contact me or your staff may call Sven-Erik Kaiser in EPA's Office of Congressional and Intergovernmental Relations at 202-566-2753.

Sincerely,

Barbara Bennett
Chief Financial Officer

Enclosures

cc: The Honorable Jeffrey Zients
Deputy Director for Management and Chief Performance Officer
Office of Management and Budget

Bob Perciasepe
Deputy Administrator
U. S. Environmental Protection Agency

Bill A. Roderick
Acting Inspector General
U.S. Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-

OFFICE OF
INSPECTOR GENERAL

MAR - 3 2010

The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator Collins:

Enclosed is a letter I sent to the Office of Management and Budget in December 2009 explaining why I believe the proposed funding level for the Office of Inspector General (OIG) for FY 2011 substantially inhibits us from performing our duties and renders EPA grant funds vulnerable to fraud, waste and abuse. EPA received $2 billion in additional funding in FY 2010 above 2009 levels for State grants for water infrastructure projects, among others. Grants have long been identified by the OIG as a management challenge and area of high-risk because of their potential for fraud, misapplication from their intended purpose, and lack of accountability. The OIG requested additional funding above the target level provided by EPA to provide the necessary oversight of these areas. The President's *Budget of the United States Government, Fiscal Year 2011* does not include my letter but makes reference to it and states that it is included in the congressional justification. However, I have been told that my letter was omitted from the hard copies of EPA's FY 2011 congressional justification delivered to Congress.

I am providing a similar letter to Chairman Lieberman, the House and Senate Appropriations Committees, and the House Oversight and Government Reform Committee. If you should have any questions on this or any other matter, please contact Eileen McMahon, Assistant Inspector General for Congressional, Public Affairs and Management, at (202) 566-2391.

Sincerely,

Bill A. Roderick
Acting Inspector General

Enclosure

cc: The Honorable Jeffrey Zients
Deputy Director for Management and Chief Performance Officer
Office of Management and Budget

Bob Perciasepe
Deputy Administrator
U.S. Environmental Protection Agency

Barbara Bennett
Chief Financial Officer
U.S. Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC - 9

OFFICE OF
INSPECTOR GENERAL

The Honorable Peter R. Orszag
Director, Office of Management and Budget
Executive Office of the President
725 17th Street, NW
Washington, D.C. 20503

Dear Mr. Orszag:

As you are aware, The Inspector General Act of 1978, as amended, 5 U.S.C. app. 3, § 6(f)(3)(E) provides that:

> *"The President shall include in each budget of the United States Government submitted to Congress-- any comments of the affected Inspector General with respect to the proposal if the Inspector General concludes that the budget submitted by the President would substantially inhibit the Inspector General from performing the duties of the office."*

Based on the proposed funding level for FY 2011 that was provided in the passback for the Environmental Protection Agency's (EPA) Office of Inspector General (OIG), I am providing the following comments for inclusion in the President's FY 2011 Budget.

"The OIG requested an FY 2011 increase of $10 million above the target level provided by EPA for the following reasons:

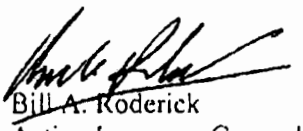
In the FY 2010 President's Budget, EPA requested: 1) $1.7 billion increase for the CleanWater State Revolving Fund; 2) $671 million increase in the Drinking Water State Revolving Fund; and 3) $475 million for the Great Lakes Restoration Initiative. The State Revolving funds will provide grants to states for water infrastructure projects. The Great Lakes Restoration Initiative will use funds to support projects targeting the most significant problems of the Great Lakes.

Grants funds have been long identified as areas of high risk and management challenges in their potential for: misapplication from the intended environmental purpose, lack of accountability, and potential for fraud. To help ensure essential transparency and the greatest public environmental benefit, the OIG should provide oversight of how these funds are used and whether desired results are achieved through financial, forensic, and performance audits of EPA's State Revolving Fund programs, grants, interagency agreements, and cooperative agreements. The OIG will also conduct assistance agreement investigations of these same areas."

As Acting Inspector General, I have concluded that this specific increase in EPA's FY 2010 budget for grants, without a specific corresponding increase in OIG audits and investigations, substantially inhibits the OIG from performing its duties and renders the grant funds vulnerable to fraud, waste and abuse."

If you or your staff have any questions, or would like to meet to discuss this matter you may reach me at (202) 566-2212, or roderick.bill@epa.gov.

Sincerely,



Bill A. Roderick
Acting Inspector General

cc: The Honorable Jeffrey Zients
The Honorable Scott Fulton
The Honorable Phyllis Fong

United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
WASHINGTON, DC 20510–6000
202–224–2035

AL-10-001-2059

July 2, 2010

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

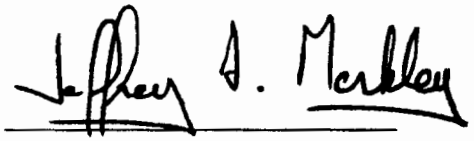
Dear Administrator Jackson:

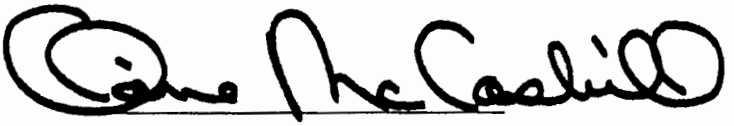
We are very concerned about the U.S. Environmental Protection Agency's (EPA) decision in the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule to consider the emissions from biomass combustion the same as emissions from fossil fuels.

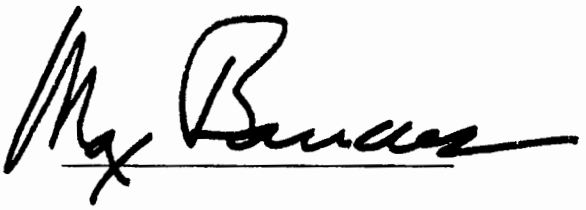
EPA's decision contradicts long-standing U.S. policy, as well as the agency's own proposed Tailoring Rule. Emissions from the combustion of biomass are not included in the Department of Energy's voluntary greenhouse gas (GHG) emissions reporting guidelines and neither are they required to be reported under EPA's GHG Reporting Rule. In the proposed Tailoring Rule, EPA proposed to calculate a source's GHG emissions based upon EPA's Inventory of U.S. GHG Emissions and Sinks. The GHG Inventory excludes biomass emissions.

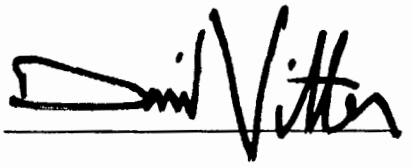
We think you would agree that renewable biomass should play a more significant role in our nation's energy policy. Unfortunately, the Tailoring Rule is discouraging the responsible development and utilization of renewable biomass. It has already forced numerous biomass energy projects into limbo. We are also concerned that it will impose new, unnecessary regulations on the current use of biomass for energy.

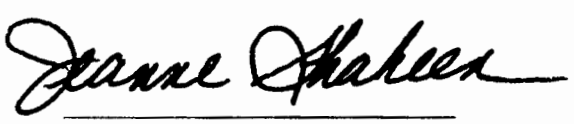
We appreciate that EPA intends to seek further comments on how to address biomass emissions under the PSD and Title V programs. With this rule, the agency has made a fundamental change in policy with little explanation. We strongly encourage you to reconsider this decision and immediately begin the process of seeking comments on it. In addition, we appreciate Secretary of Agriculture Tom Vilsack's commitment to working with EPA on this issue and encourage you to utilize the expertise of the U.S. Department of Agriculture.

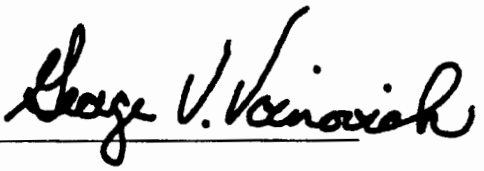












UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 12 2010

OFFICE OF
AIR AND RADIATION

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your July 2, 2010, letter co-signed by 24 of your colleagues, to Administrator Jackson raising concerns regarding the treatment of biomass combustion emissions in the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule (the "Tailoring Rule"). At her request, I am writing to respond.

I would like to address your comments about the treatment of biomass combustion emissions in the final Tailoring Rule and to assure you that we plan to further consider how the PSD and Title V permitting programs apply to these emissions.

As you noted, the final Tailoring Rule does not exclude biomass-derived carbon dioxide (CO_2) emissions from calculations for determining PSD and Title V applicability for greenhouse gases (GHGs). To clarify a point made in your letter, the proposed Tailoring Rule also did not propose to exclude biomass emissions from the calculations for determining PSD and Title V applicability for GHGs. The proposed Tailoring Rule pointed to the U.S. Environmental Protection Agency's (EPA) Inventory of Greenhouse Gas Emissions and Sinks for guidance on how to estimate a source's GHG emissions on a CO_2-equivalent basis using global warming potential (GWP) values[1]. This narrow reference to the use of GWP values for estimating GHG emissions was provided to offer consistent guidance on how to calculate these emissions and not as an indication, direct or implied, that biomass emissions would be excluded from permitting applicability merely by association with the national inventory.

We recognize the concerns you raise on the treatment of biomass combustion emissions for air permitting purposes. As stated in the final Tailoring Rule, we are mindful of the role that biomass or biogenic fuels and feedstocks could play in reducing anthropogenic GHG emissions, and we do not dispute observations that many federal and international rules and policies treat biogenic and fossil fuel sources of CO_2 emissions differently. Nevertheless, we explained that the legal basis for the Tailoring Rule, reflecting specifically the overwhelming permitting burdens that would be created under the statutory emissions thresholds, does not itself provide a rationale for excluding all emissions of CO_2 from combustion of a particular fuel, even a biogenic one.

[1] See 74 FR 55351, under the definition for "carbon dioxide equivalent"

The fact that in the Tailoring Rule EPA did not take final action one way or another concerning such exclusion does not mean that EPA has decided that there is no basis for treating biomass combustion CO_2 emissions differently from fossil fuel combustion CO_2 emissions under the Clean Air Act's PSD and Title V programs. The Agency is committed to working with stakeholders to examine appropriate ways to treat biomass combustion emissions, and to assess the associated impacts on the development of policies and programs that recognize the potential for biomass to reduce overall GHG emissions and enhance US energy security. Accordingly, on July 9, 2010 we issued a Call for Information[2] asking for stakeholder input on approaches to addressing GHG emissions from bioenergy and other biogenic sources, and the underlying science that should inform these approaches. Taking into account stakeholder feedback, we will examine how we might address such emissions under the PSD and Title V programs. We will move expeditiously on this topic over the next several months. As we do so, we will continue to work with key stakeholders and partners, including the US Department of Agriculture, whose offices bring recognized expertise and critical perspectives to these issues.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Patricia Haman in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2806.

Sincerely,

Gina McCarthy
Assistant Administrator

[2] Posted online at http://www.epa.gov/climatechange/emissions/biogenic_emissions.html

United States Senate

WASHINGTON, DC 20510

AL-10-001-6968

September 24, 2010

Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Mail Code 2822 T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

We are writing regarding the *Identification of Non-Hazardous Secondary Materials That Are Solid Wastes; Proposed Rule*, published in the Federal Register on June 4, 2010 and to express our concerns that the rule may unnecessarily reduce valuable recycling in our region.

USEPA and our states have goals to conserve resources and maximize the diversion of materials from permanent disposal. However, the rule as proposed would likely interfere significantly with the appropriate reuse of resources, augment demand for virgin materials and fuels, reduce renewable biomass energy, increase greenhouse gas emissions, require disposal of materials that have value, and consume landfill space. Specifically, our concerns are summarized as follows:

State Programs: All of our states have well-established programs that thoroughly review and approve the use of non-hazardous secondary materials (NHSM) as fuel or as ingredients in manufacturing processes. Our states believe that continued state oversight of the use of NHSM as fuel or ingredient is required for protection of human health and the environment and want assurance that their regulatory authority over NHSM is not undermined by this proposed rule.

Self-Certification: The self-certification aspect of the rule in which a user of an NHSM for fuel, or as an ingredient, determines whether the "legitimacy criteria" have been met is of significant concern. There is potential for inconsistency in how these determinations are made by users, and the potential for abuse would be significant. As a result, we strongly recommend that all use of a NHSM as fuel or ingredients be subject to review and approval – preferably by existing state programs.

Processing: When an NHSM has been processed to produce a fuel or ingredient product that meets the legitimacy criteria in the rule, and the specification set by the user of the fuel/ingredient, it should be considered adequately processed for the purposes of the rule for use at facilities regulated under the Clean Air Act's Section 112.

Comparable Contamination: The rule should recognize that for most NHSM used as fuel, some contaminant levels exceed those in the traditional fuel while others are lower. Likewise, a contaminant might be present in the NHSM but non-detectable in the traditional fuel or vice versa. Accordingly, the relative risk must be taken into account when establishing contaminant standards.

Scrap Tires and Construction and Demolition Materials: The combustion of scrap tires and construction and demolition (C&D) wood in boilers subject to CAA Section 112 is an important aspect of management of these materials in the Northeast. Section 112 boilers are unlikely to invest the huge capital resources to upgrade to Section 129 facilities, and instead cease accepting these NHSM with numerous negative consequences outlined below. Specifcally related to scrap tires, according to comments written by the Northeast Waste Management Officials' Association, "to the extent that air emissions are a concern with the combustion of tires, it is not a result of the presence of steel." As a result, the presence or absence of steel in scrap tires should not be a factor in the legitimacy of processed tires as a fuel.

Construction and Demolition (C&D) material processors in several of our states rely on being able to sell processed C&D wood to facilities in Maine and Quebec, Canada. Maine has developed criteria specific to this product to ensure that C&D wood is adequately processed and meets legitimacy criteria, and that human health and the environment are protected. Many of our C&D processors have made significant investments in systems that use mechanical methods and human labor to recover high percentages of incoming material, including C&D wood for reuse and recycling, thereby significantly reducing the amount of C&D waste send to landfills for disposal or use as alternative daily cover. If markets for the reuse of C&D wood are limited, many C&D processors that recover material for use outside the landfill would not remain viable and that would negatively affect recycling of all C&D materials.

Thank you for the opportunity to comment on the proposed rule. We ask that you carefully consider the potential negative impacts of this proposed rulemaking and modify the final rule to address the concerns raised in this letter.

Sincerely,

OLYMPIA J. SNOWE
United States Senator

SUSAN M. COLLINS
United States Senator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 1 9 2010

THE ADMINISTRATOR

The Honorable Susan Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter of September 24, 2010, regarding the U. S. Environmental Protection Agency's (EPA's) proposed rule, "Identification of Non-Hazardous Secondary Materials that are Solid Waste." In your letter, you express concerns that the rule may unnecessarily reduce valuable recycling in your region. I appreciate your interest in these important issues, and want to assure you that EPA does not want to reduce legitimate recycling in the country.

This action is being proposed along with three Clean Air Act (CAA) rules. The proposed rule clarifies under the Resource Conservation and Recovery Act (RCRA) which non-hazardous secondary materials when burned in a combustion unit are or are not solid wastes. If a non-hazardous secondary material is not a "solid waste" under RCRA, and is burned in a combustion unit, then the unit would be subject to the applicable CAA section 112 requirements. On the other hand, if the material is considered a "solid waste," then the combustion unit would be subject to the CAA section 129 requirements.

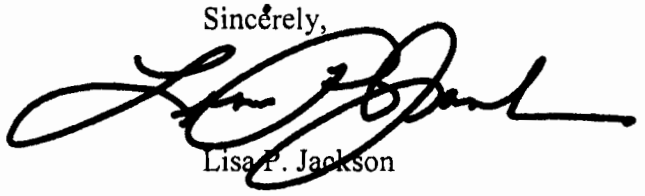
In general, the proposed rule identified non-hazardous secondary materials burned in combustion as solid wastes except under the following circumstances: 1) when used as a fuel that remains within the control of the generator and it meets the legitimacy criteria; 2) when used as an ingredient in a manufacturing process (whether by the generator or a third party) that meets the legitimacy criteria; 3) when the non-hazardous secondary material has been sufficiently processed to produce a non-waste fuel or ingredient product that meets the legitimacy criteria; and 4) when, through a case-by-case petition process, it has been determined that non-hazardous secondary material handled outside the control of the generator has not been discarded and is indistinguishable in all relevant aspects from a fuel product. The proposal identified several factors that the person who generated the non-hazardous secondary material would need to consider in determining whether the material would qualify as a legitimate fuel or ingredient. Those factors include: (1) whether the material is handled as a valuable commodity; (2) whether it has a meaningful heat value (in the case of a fuel) or it is used to produce a valuable product (in the case of an ingredient); and (3) whether it contains contaminants at levels comparable to the levels found in the virgin products that it is replacing.

The proposal also requested comment on two other approaches. The "Alternative Approach" attempted to define solid waste as broadly as possible, while still being legally defensible. Under this alternative, only fuels or ingredients that remain within the control of the generator and meet the legitimacy criteria would not be solid wastes. The Agency also took comment on the approach that is most supported by environmental groups: that all non-hazardous secondary materials when combusted are solid wastes and would be subject to the section 129 CAA requirements.

The Agency solicited comments and information on many of the issues you mentioned in your letter. I appreciate your comments and we will ensure that your letter is entered into the rulemaking docket (EPA-HQ-RCRA-2008-0329).

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-1859.

Sincerely,



Lisa P. Jackson

SUSAN M. COLLINS
MAINE

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AL-07-000-7167

COMMITTEES
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, RANKING MEMBER
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-1904
Post Office Box 655
Bangor, ME 04402
April 16, 2007

Ms. Susan Parker Bodine
Assistant Administrator
Environmental Protection Agency
Office of Solid Waste
and Emerency Response
1200 Pensylvania Ave., NW, Rm. 3426
Washington, DC 20460

Fax: (202)501-1519

Dear Ms. Bodine:

Senator Collins has been contacted by Ek Le from Bangor, Maine with a request for assistance.

Mr. would like to know if the U.S. Environmental Protection Agency (EPA), Office of Solid Waste has statutory authority to regulate domestic solid waste, and what those statutes permit. He believes that additional container and packaging legislation is needed to require companies to use recyclable packaging. Mr. proposed that a bill he refers to as the "Container & Packaging Producer Responsibility Act of 2007 Design Stage Planning be introduced to require U.S. industry to use only approved recyclable packaging. He also believes that a rating system should be developed to determine which forms of packaging are acceptable for use in the United States.

Senator Collins has a strong desire to be responsive to constituent inquiries. With this in mind, I have taken the liberty of forwarding a copy of Mr. letter to Senator Collins to you. I would appreciate your review of this matter, and any information you can provide to assure Mr. that his concerns are being addressed.

Thank you for your attention to this request. If you have any questions regarding this inquiry, please don't hesitate to contact me at (207) 945-0417.

Sincerely,

Michael C. Noyes
Staff Assistant to
Susan M. Collins
United States Senator

Attachments

Noyes, Michael (Collins)

From:

Sent: Tuesday, April 17, 2007 5:35 PM

To: Noyes, Michael (Collins)

Cc: McNaughton, Terry (Snowe); Shawn.Legendre@mail.house.gov; Woodcock, Carol (Collins)

Subject: EPA's Office of Solid Waste statutory authority to regulate domestic solid waste

Hi Mike,
Thanks for seeking out this statute for me. Jay

Mr. David Hunter
Staff Scientist
Office of United States Senator Susan M. Collins
461 Dirksen Senate Office Building
Washington, DC 20510-1904

RE: Container & Packaging Producer Responsibility Act of 2006-2007
Design-Stage Planning

Dear David,

The following is my response to the Congressional Research Service report, but first a passage from the book *Cradle to Cradle* by William McDonough and Michael Braungart. On page 59, the authors cite a book written by Jane Jacobs, entitled *Systems of Survival*. McDonough and Braungart write that Jacobs describes two fundamental syndromes of human civilizations: what she calls the *guardian* and *commerce*. The guardian is the government, the agency whose primary purpose is to preserve and protect the public. Commerce , on the other hand is the day-to-day instant exchange of value. Regulation, the tool of the guardian, will slow down commerce. It is my view that the industry of container's & packaging needs to slow down.

In 100 years of the modern container & packaging era, there has not been any regulation. A less harmful industry environmentally, the banking industry, had to be regulated many years (1930's to 1980's) , (for different reasons I admit), before deregulation. One could argue that the container & packaging industry has done more harm to the environmental landscape than the banking industry did to it's patrons.

Now to the Congressional Research Service report and Mr. Mcarthy's evaluation.

1) Second paragraph under, The Rating System,....somewhat vague concerning what the standards would be." Yes, I agree my standards are somewhat vague, principally because the idea creation consists of one representative, me, and all the limitations of just one unqualified individual. However, I believe the basic concept, design-stage planning, is concrete and if afforded a "think-tank" setting of several highly qualified individuals (i.e. environmental engineers, systems

scientists, etc., etc.) that new ideas and approachs to this concept would likely emerge.

2) Page 3, 3rd full paragraph,...landfill capacity is abundant in many parts of the country, and disposal is cheap;.....In the more populated areas of the country, such as the East coast, landfill space is at a premium. For example, even in mostly rural Maine, landfill permitting has met with stiff opposition (Re: West Old Town, Maine Landfill). Disposal is not cheap. There is the transportation costs of trucking trash across state lines. And, there is a tremendous opportunity cost of lost petroleum and wood fiber products used just once and lost forever.

In closing, I cited in my letter to Senator Collins dated June 21, 2005, that it was my understanding that the Office of Solid Waste in the U.S. EPA currently has statutory authority to regulate domestic solid waste. It may warrant investigation into this statute to see what is already on the books. It may be a question of enforcement.

If not, as guardian, I hope you will recommend a bill at this time.

Thank you for your time and consideration.

Sincerely,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

MAY 18 2007

Mr. [illegible]

Bangor, Maine 04401

Dear Mr

Thank you for your inquiry to Senator Susan Collins regarding the regulation of domestic solid waste. Senator Collins' office forwarded your inquiry to the Environmental Protection Agency (EPA) and asked me to respond to you directly. We appreciate your continued interest in the area of packaging and container recycling.

In your correspondence with Senator Collins' office, you asked whether EPA has statutory authority to regulate solid waste. Subtitle D of the Resource Conservation and Recovery Act (RCRA) authorizes regulations concerning the disposal of solid non-hazardous waste. While EPA was directed to establish minimum criteria defining safe solid non-hazardous waste management practices, the Subtitle D program is designed to be largely implemented by the states. There are other provisions of RCRA that authorize EPA to promote resource conservation, waste minimization and recycling. For example, Section 8001 of RCRA authorizes research, demonstrations, training and other activities concerning resource conservation and solid waste.

You also recommended the need for container and packaging recycling legislation to Senator Collins. As we stated in our March 10, 2006 letter, EPA takes no position on your proposed bill requiring companies to use recyclable packaging. The Agency continues to emphasize source reduction, reuse, and recycling for waste streams such as glass, plastic and paper through partnership programs and collaborative efforts. We are working with state and local governments, as well as the packaging industry and the beverage container manufacturers, to encourage waste reduction and recycling. EPA understands that for both economic and environmental reasons there is great value in shrinking the waste stream to avoid disposal.

Again, thank you for your interest in this issue. If you have any further questions, please contact John Cross in the Office of Solid Waste at (703) 308-8577.

Sincerely,

Susan Parker Bodine
Assistant Administrator

cc: Michael Noyes
Office of Senator Susan Collins

AL-08-000-3306

SUSAN M. COLLINS
MAINE

413 DIRKSEN SENATE OFFICE BUILDING
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(202) 224-2523
(202) 224-2693 (FAX)

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
Ranking Member
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

March 7, 2008

Mr. Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Ariel Rios Building
Washington, DC 20460

Dear Mr. Johnson:

I am writing you today on behalf of the City of Lewiston, Maine. As you know, the City of Lewiston has been in the process of developing the Gendron Business Park. Recently, the City has faced difficulty obtaining prompt responses about the federal environmental permits required for this project to move forward.

The Gendron Business Park Phase II project is part of a significant economic revitalization effort in the City of Lewiston. The people of Maine are known internationally as good stewards of the environment. As such, we place a high priority on balancing the needs of the economy and those of the environment. It is my hope that you will work with the City to establish a plan that is acceptable to all parties involved.

The City of Lewiston has worked hard over the past few years to satisfy the recommendations of the Environmental Protection Agency, Army Corps of Engineers, and U.S. Fish and Wildlife Service. The City has responded promptly to concerns raised by your agency throughout the permit process. It is my hope that you will give this issue proper attention. Thank you for your consideration of this matter.

Sincerely,

Susan M. Collins

Susan M. Collins
United States Senator

SMC:deh
cc: Director, FWS
Assistant Secretary of the Army, Civil Works

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

March 24, 2008

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Susan M. Collins
United States Senator
11 Lisbon St.
Lewiston, ME 04240

RE: Gendron Business Park

Dear Senator Collins:

Thank you for your letter of March 7, 2008, to Administrator Johnson regarding the proposed Gendron Business Park in Lewiston, Maine. Since EPA's New England office is working on the proposed project, the Administrator asked me to respond to your letter.

The City of Lewiston, in partnership with Gendron and Gendron, Inc., plans to develop Phase II of a business park for ten industrial/commercial lots on 150 acres of land. The City believes that this location is attractive for warehousing and distribution companies given its location within three miles of the Maine Turnpike. The site is mostly forested and zoned industrial.

EPA's primary role for reviewing this project comes under section 404 of the federal Clean Water Act ("the Act"). Under section 404 of the Act, the U.S. Army Corps of Engineers (Corps) issues or denies permits for construction activities that would occur in wetlands and other waters. The EPA and other federal agencies comment to the Corps with respect to the possible environmental effects of proposed projects that require section 404 permits.

Since the applicant proposes to fill 5.6 acres of wetlands (including 3 valuable vernal pools), it must be processed as an individual permit application by the Corps. This proposed project does not qualify for expedited review under the Maine State Program General Permit (SPGP) since it would affect more than 3 acres of wetlands, the upper threshold of the SPGP. Under the individual permit process, the Corps issues a public notice soliciting comments on this project from federal, state and local agencies as well as members of the public. After considering all comments received and a review of its record, the Corps makes a permit decision.

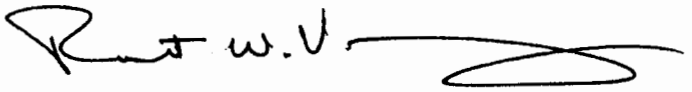
To date, our discussions with the applicant on this proposed project have been in the context of pre-application; that is, no public notice has been issued by the Corps at this time. In pre-application meetings with the applicant, its consultant, the City, and the Corps, U.S. Fish and Wildlife Service, and state agencies, as well as in email messages to those parties, we have stated several times that the proposed project would result in extensive adverse impacts to affected wetlands and waters. In addition, we have noted that the applicant's proposed compensatory mitigation plan to offset those adverse impacts is inadequate. Over the last year, the federal

agencies, including EPA, have provided the applicant and its consultants with several suggestions for reducing impacts and increasing the value of the mitigation plan. However, the applicant has made few substantive changes to reduce impacts or improve the compensatory mitigation plan.

All of our comments have been directed to the Corps as the central point for the federal permit process. Please be assured that those comments were transmitted to the Corps in a timely manner. The Corps informs us that it forwarded our comments to the City, Gendron, and its consultants shortly after receiving them from us. The Corps also informs us that they have had no response from the applicant in the last several months, either to react to our concerns or to ask the Corps to move forward with the permit process by issuing a public notice. Although we are uncertain of the City's intentions at this time, we remain ready to continue working with all parties towards an acceptable outcome for this project.

Again, thank you for your letter. If you or your staff should require additional assistance, please contact Michael Ochs in the Office of Government Relations at (617) 918-1066.

Sincerely,



Robert W. Varney
Regional Administrator

SUSAN M. COLLINS
MAINE

413 DIRKSEN SENATE OFFICE BUILDING
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COMMITTEES:
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ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-1904

AL-09-000-3588

March 6, 2009

The Honorable Lisa Jackson
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Dear Administrator Jackson,

I am writing to urge you to expand on the biofuels distribution and advanced biofuels research and development program, authorized by the Energy Independence and Security Act of 2007, to include research to determine ways to make biofuels, like ethanol, more compatible with small non-road engines. In addition, I request that you provide me with a list of recommendations for other possible actions you could take to address this issue. I am receiving an increasing number of complaints from my constituents about the E10 fuel blend and its potential to damage small engines such as those in boats, farm equipment, snowmobiles, and lawnmowers.

In Sec. 248 of the Energy Independence and Security Act of 2007 (P.L. 110-140), the Secretary of the Department of Energy (DOE) is directed, in coordination with the Secretary of the Department of Transportation (DOT) and in consultation with the Administrator of the Environmental Protection Agency (EPA), to carry out a program of research and development regarding the impact that biofuels, like ethanol, may have on existing fuel storage and delivery infrastructure used for petroleum-based fuels. It is critical that these biofuels also are safe to use in operating small non-road engines. Previous testing done through DOE shows that increased ethanol content in smaller engines creates a leaner burning mixture, which may increase idle speed on some small engines, creating unanticipated clutch engagement on equipment such as chainsaws and handheld trimmers. Also, E10 is more corrosive and less efficient that traditional gasoline blends. During these difficult economic times, equipment damage due to E10 only adds to the many challenges facing Maine's farmers, fishermen, independent woodsmen, and recreational industry.

I urge you to expedite research and testing in this area in an effort to prevent or mitigate the potential adverse effects of ethanol fuel blends on small non-road engines. I ask that you give immediate attention to this issue, and I look forward to hearing your ideas and recommendations. Thank you for your important work to develop clean, alternative energy sources and help our nation to achieve energy independence.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

cc: Secretary LaHood
Secretary Chu

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 07 2009

OFFICE OF
AIR AND RADIATION

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510-1904

Dear Senator Collins:

Thank you for your letter of March 6, 2009, regarding biofuels research and development. In your letter you urge the U.S. Environmental Protection Agency (EPA) to perform research and testing on ethanol blends, to ensure compatibility with different engines.

Ten percent ethanol blends (E10) have been in use in the United States for over 30 years. During recent years, due to market conditions and government policies aimed at displacing crude oil use, ethanol use has expanded rapidly into areas where its use was historically more limited, including Maine. As you note in your letter, the use of ethanol blends in equipment not originally designed to run on such blends can cause a range of mechanical and operational issues. However, since the introduction of E10 blends was legalized in 1978, vehicle and engine manufacturers have been making modifications to their equipments' design and calibration in order to allow for the safe use of this equipment on E10 blends.

EPA has likewise been involved in research and testing of E10 blends on vehicles and nonroad equipment for many years. In the early 1990s, EPA and industry coordinated on extensive test programs costing over $30 million to quantify the impacts of ethanol and other fuel property changes on emissions. As vehicle and engine technology has changed considerably since then, we are currently in the process of carrying out, in conjunction with our industry stakeholders and the Department of Energy (DOE), a new round of test programs designed to measure the impacts of these fuel changes (especially E10), on today's fleet of vehicles and engines.

While a great deal of work is underway with E10 blends, many of the concerns with ethanol blends are now focused on the use of blends with concentrations greater than ten percent. On March 6, 2009, EPA received a waiver application from Growth Energy to allow for the use of ethanol blends at concentrations up to 15 percent by volume. We will be publishing this waiver application shortly for public comment and the record will be open until December 1, 2009. In the meantime, we have been working, and will continue to work, with DOE and the Department of Transportation to evaluate the potential impacts of higher level ethanol blends on vehicles, nonroad equipment, and their emissions.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Patricia Haman, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2806.

Sincerely,

Elizabeth Craig

Elizabeth Craig
Acting Assistant Administrator

AL-09-000-9286

United States Senate

WASHINGTON, DC 20510

June 5, 2009

The Honorable Lisa Jackson
Administrator, Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Jackson:

We are writing in response to the Environmental Protection Agency's (EPA) consideration of a proposal to increase the ethanol blend level in gasoline beyond the current 10 percent. We urge you to ensure that independent and comprehensive testing has been completed prior to approving any waiver from current EPA guidance as required under the Clean Air Act.

Some have advocated that Congress or the EPA approve mid-level ethanol blends before comprehensive testing has been completed by qualified and independent testing bodies, and all relevant federal agencies. While we strongly support the use of renewable fuels, it is our understanding that to date only preliminary assessments have been conducted relative to long-term durability, tailpipe emissions, evaporative emissions, drivability, materials compatibility, emissions inventory and on-board diagnostic integrity. Any waiver to increase the ethanol blend level must be based upon more complete testing.

In addition to potential technical, consumer protection and air quality issues that have not been adequately studied, we believe that this could potentially have negative consequences for many Americans in these challenging economic times. We feel strongly that any proposal to increase ethanol levels must be subjected to a complete assessment of what such an increase might do to the economy and the feedstock markets generally that our livestock and poultry producers rely on every day. We urge you to assess more thoroughly the potential impacts of increasing the ethanol blend before any changes are made.

We thank you for your attention to this matter.

Sincerely,

cc: The Honorable Steven Chu, Secretary, U.S. Department of Energy
The Honorable Tom Vilsack, Secretary, U.S. Department of Agriculture
The Honorable Carol Browner, Assistant to the President for Energy and Climate Change

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 20 2009

OFFICE OF
AIR AND RADIATION

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your June 5, 2009, letter to Administrator Jackson, co-signed by 20 of your colleagues, concerning a pending Clean Air Act (Act) waiver request to increase the allowable ethanol content of gasoline from 10 to 15 percent by volume. Your letter expresses concerns about the potential adverse impact mid-level ethanol blends might have on engines, and urges the U.S. Environmental Protection Agency (EPA) to ensure independent and comprehensive testing is complete before making a waiver decision. You also discuss potential negative consequences for consumers in challenging economic times and request that we carefully assess the impact of increasing ethanol blend levels on our economy and on feedstock markets.

As you know, EPA is carefully considering the waiver request we received from Growth Energy on March 6, 2009. A notice of its receipt and request for public comment was published in the Federal Register on April 21, 2009, and the comment period will remain open until July 20. We will place your comments in the public docket.

The issues raised by the waiver request are very important and complex. The criteria in the Clean Air Act for evaluating a waiver request are very specific. The Act only requires that the waiver applicant demonstrate that the ethanol increase will not cause or contribute to the failure of vehicles or engines to meet emission standards.

While we are not able to directly consider economic impacts as factors in the waiver decision, these impacts are nonetheless important. Therefore EPA is working closely with the U.S. Department of Energy (DOE) and the U.S. Department of Agriculture (USDA) to analyze economic issues and other impacts as part of our renewable fuels standard rulemaking effort. The proposed rule is currently open for public comment.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Diann Frantz in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,

Gina McCarthy
Assistant Administrator

SUSAN M. COLLINS
MAINE

413 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1904
(202) 224-2523
(202) 224-2693 (FAX)

United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES:
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, RANKING MEMBER
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

AL-09-001-6603

Post Office Box 655
Bangor, ME 04402
October 28, 2009

Ms. Joyce K. Frank
Acting Associate Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20005

Dear Ms. Frank:

Senator Collins has been contacted by Ex. 6 from Ellsworth, Maine, with a request for assistance.

Ms. is concerned that her neighbor may have destroyed wetlands, and that the automobile junkyard he developed may be contaminating the soil and groundwater around the property. She also believes that vernal pools were destroyed when they were filled, and that her neighbor's organic cranberry bog and garden may be in jeopardy of contamination from oil runoff from the auto graveyard. She asked that I write on her behalf, to ask that this matter be reviewed, and that the area be visited to determine if it is suitable for a development of this kind.

Senator Collins has a strong desire to be responsive to constituent inquiries. With this in mind, I have taken the liberty of forwarding a copy of Ms. letter, and the information she provided to Senator Collins. I would appreciate your review of this matter and any assistance you can provide to assure Ms. that her concerns are being addressed.

Thank you in advance for your attention to this request. If you have any questions regarding this inquiry, please don't hesitate to contact me at (207)945-0417.

Sincerely,

Michael C. Noyes
Staff Assistant to
Susan M. Collins
United States Senator

Enclosure

10/13/09

Dear Michael Noyes,

Here are some of the pictures. I have some more that I need to develop.

Thank you for your help.

Sincerely Yours,

[redacted]

Dear Mr. Mahaney,

I have some serious concerns about this project on 635 North Street, in Ellsworth Maine. I have been told many different things by the Code Enforcment office of Ellsworth. We have caught him in many untruthful statements. He told us it would have to be approved by the EPA.
Then he stated there was no wet land out there. He promised us someone from the EPA would come out after the July 1 meeting. On the application Mr Cullen stated he didn't need to come out again. That was not signed.

Mr. Card extended the road to the junk yard over a spring / vernal pool. They stated in the application that the road already exhisted. It was an old logging trail the only could be entered in the winter and they had to pack snow and lay down pine boughs to get it to freeze. Mr Card filled this in with the town code enforcement officers permission. There were lizards, frogs. ect in there. There isn't enough gravel to ever fill in that pool. Now it is trapped on my property as well as Mr. Cards property. You can see this in picture #1,2,3,6,7, and 8. The road before that looked like the road #49,58,57,60, and 61.

I'm not sure who stated there was no wet land out there. They need to lose there job. It doesn't matter if Ellsworth wants this junk yard/ automoblie graveyard or not. They stilled needed to procede with caution and protect the land owners abutting this property. Every week end I witness about 20 loads of rocks, dirt ect.(every day) going in to fill the wet mess he has created . Where ever you see a pile of dead bruse behind it is wet land.

When channel 2 filmed the area Mr. Card had cleared, the land was extrememly wet, Someone went up to their knees in the muck. Jim's trackor got stuck the other day and he had a hard time getting out. Mr. Card posted signs since channel 2 went out there. Maybe it is because the project is much larger then he stated on his application. It is about 2 1/2 acres now. If he already is not in compliance what will he do later on. If we can't trust the code enforcement officer, now, we have no hope of him ensuring the compliance later. Mr Card never surveyed the property, There was never a title or deed change from the previous owner, in the packet, with the application. Mr. Card went in and cleared a wet land area abutting Michael and Patti MacFarland he crossed Ann Kanes and the MacFarlands property to do this. He had no permission. When Michael took the code enforcement officer out to see it, he stated Jimmy shouldn't have done that. It will grow back. That is why no one is allowed to cut that it will wash away into the pond. It isn't going to grow back. Other people abutt Mr. Cards property and they have a right to look and be on their property. The wet land borders the 2 back sides of the junk yard, it is wet all the way to Dale Wilber-Maddocks trout pond in his front lawn. The water travels from the to the stream that goes under my right of way to a little pond beside North Street and then to Gram Lake.

This is the worse place for a Junk Yard/ automoblie grave yard. I believe if an Enviromental impact statement was done, they would not be allowed to have one. No precautions were taken to protect our rights as well as the safety of our families. There are organic farms on both sides of the junk yard. One has a Organic cranberry bogg. I believe this area was chosen because we are either too poor to fight, or single parents. You wouldn't see this project going in beside anyone on that city counsel who pushed this through.

There was a new Zoning for shoreland prior to the the counsel pushed this through. A parking lot should have been considered a structure and gone before the planning board. They didn't want to take a chance with the planning board disapproving it.

I do not care I will fight this until we go before a judge this project is unsafe and and no precautions for the environment or our well being.

The crediability of James Card as well as the code enforcement officer is in guestion here. The code enforcement officer walked Dale's land with him. He saw all the springs and stated to Dale it was wet land, and then later at the June 15th meeting denied it. I saw standing water no springs. Abutting the site is picture 64,65,66,and 67. If you follow the water it goes to Dales trout pond. Which is pictue 69,70,71,and 72.

Pictures 18 through 34 are the pictures from the site to Dales front yard. Pictures 35 through 52 are all of the site for the junk yard. It is wet James will never fill in enought to make it dry. We were told the project was on hold until after the appeal. I may have some pictures soon of cars out there. One of the abutting land owners said there is 2 or 3 in there already.

Sincerely Youre,

CC Michael Noyes
CC Senator Susan CollinsYour message is ready to be sent with the following file or link a

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

December 1, 2009

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Susan M. Collins
United States Senator
P.O. Box 655
202 Harlow St., Rm. 204
Bangor, Maine 04401

Dear Senator Collins:

Thank you for your letter of October 28, 2009, on behalf of your constituent, Ms. of Ellsworth, Maine. Ms. concerned that her neighbor, James Card, may be destroying wetlands while developing a portion of his property. Ms. and another neighbor, Mr. have shared their concerns with EPA. EPA has contacted the Maine Department of Environmental Protection (ME DEP) wetlands enforcement staff, who have visited the site on two occasions, most recently on October 30, 2009.

EPA has spoken with Ms. and has consulted with ME DEP and the Maine Program Office of the Army Corps of Engineers (Corps). As with all wetlands complaints, EPA has examined wetlands and topographic maps, EPA and Corps databases and available aerial photography. Based on the information we have seen to date, EPA believes that this matter is best handled by ME DEP.

EPA always values citizen interest in enhancing environmental protection. EPA responds to citizen concerns based on the facts and application of relevant federal law and regulations. Under the provisions of the federal Clean Water Act, the discharge of pollutants into waters of the United States, including most wetlands, is prohibited, unless authorized by a permit. The U.S. Army Corps of Engineers is responsible for accepting applications for and issuing or denying permits to perform such work, while the EPA reviews and comments to the Corps on the permit applications received. Both agencies share enforcement responsibilities under the Act, which provides administrative and judicial penalties for violations.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Ms. Michael Ochs in the Office of Government Relations at (617) 918-1066.

Sincerely,

Ira W. Leighton
Acting Regional Administrator

bcc: John Cullen, ME DEP, Bangor
Shawn Mahaney, USACE, Manchester
Mark Mahoney, EPA
Michael Ochs, EPA

United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
WASHINGTON, DC 20510-6000
202-224-2035

AL-10-001-1342

July 2, 2010

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

We are very concerned about the U.S. Environmental Protection Agency's (EPA) decision in the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule to consider the emissions from biomass combustion the same as emissions from fossil fuels.

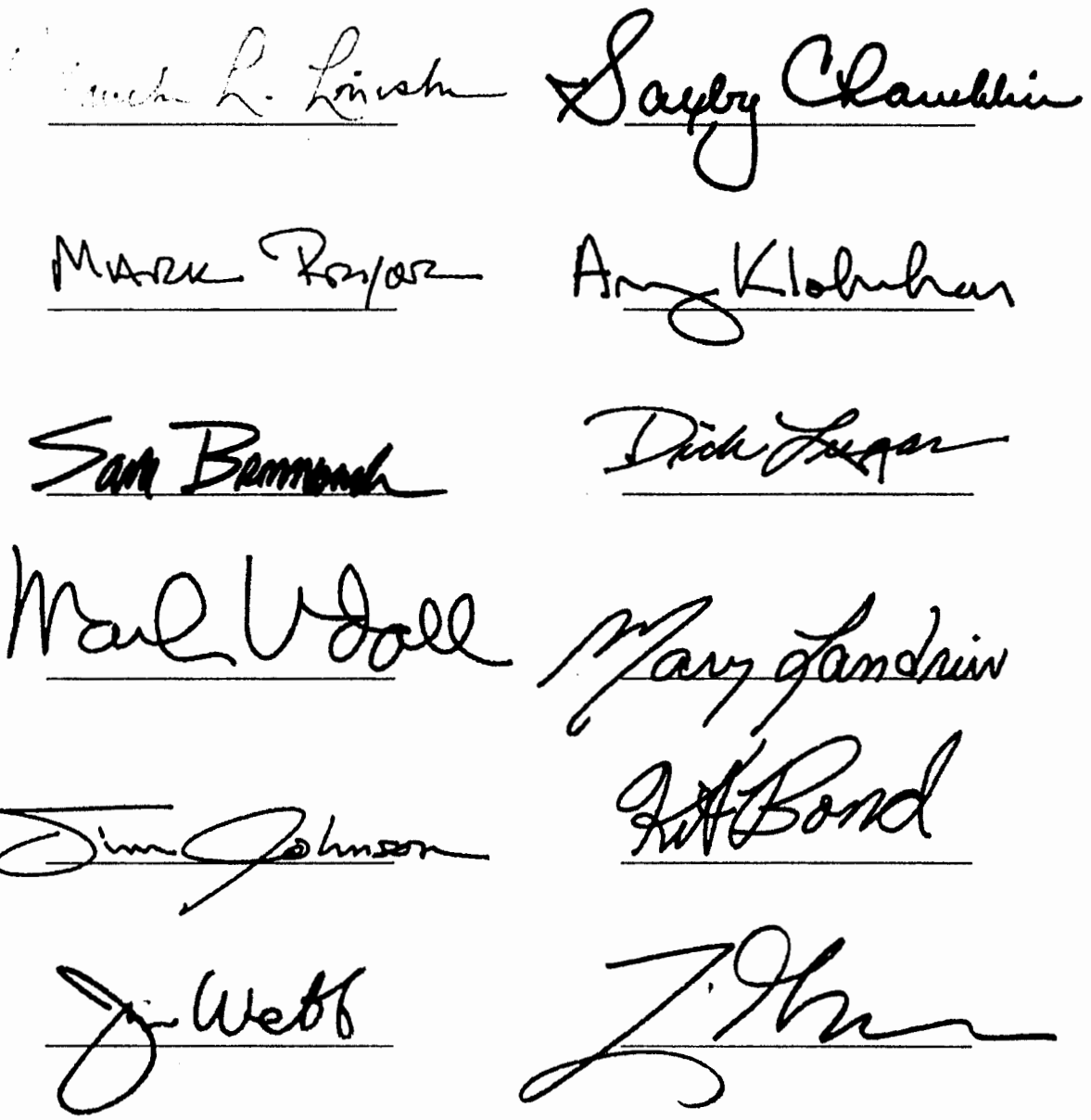
EPA's decision contradicts long-standing U.S. policy, as well as the agency's own proposed Tailoring Rule. Emissions from the combustion of biomass are not included in the Department of Energy's voluntary greenhouse gas (GHG) emissions reporting guidelines and neither are they required to be reported under EPA's GHG Reporting Rule. In the proposed Tailoring Rule, EPA proposed to calculate a source's GHG emissions based upon EPA's Inventory of U.S. GHG Emissions and Sinks. The GHG Inventory excludes biomass emissions.

We think you would agree that renewable biomass should play a more significant role in our nation's energy policy. Unfortunately, the Tailoring Rule is discouraging the responsible development and utilization of renewable biomass. It has already forced numerous biomass energy projects into limbo. We are also concerned that it will impose new, unnecessary regulations on the current use of biomass for energy.

We appreciate that EPA intends to seek further comments on how to address biomass emissions under the PSD and Title V programs. With this rule, the agency has made a fundamental change in policy with little explanation. We strongly encourage you to reconsider this decision and immediately begin the process of seeking comments on it. In addition, we appreciate Secretary of Agriculture Tom Vilsack's commitment to working with EPA on this issue and encourage you to utilize the expertise of the U.S. Department of Agriculture.

Please let us know as soon as possible the agency's plans on this matter. We appreciate your attention to this important issue.

Sincerely,



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 09 2010

OFFICE OF
AIR AND RADIATION

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20515

Dear Senator Collins:

Thank you for your July 2, 2010, letter to Administrator Jackson raising concerns regarding the treatment of biomass combustion emissions in the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule (the "Tailoring Rule"). At her request, I am writing to respond.

I would like to address your comments about the treatment of biomass combustion emissions in the final Tailoring Rule and to assure you that we plan to further consider how the PSD and Title V permitting programs apply to these emissions.

As you noted, the final Tailoring Rule does not exclude biomass-derived carbon dioxide emissions from the calculations for determining PSD and Title V applicability for GHGs. To clarify a point made in your letter, the proposed Tailoring Rule also did not propose to exclude biomass emissions from the calculations for determining PSD and Title V applicability for GHGs. The proposed Tailoring Rule pointed to EPA's Inventory of Greenhouse Gas Emissions and Sinks for guidance on how to estimate a source's GHG emissions on a CO_2-equivalent basis using global warming potential (GWP) values[1]. This narrow reference to the use of GWP values for estimating GHG emissions was provided to offer consistent guidance on how to calculate these emissions and not as an indication, direct or implied, that biomass emissions would be excluded from permitting applicability merely by association with the national inventory.

We recognize the concerns you raise on the treatment of biomass combustion emissions for air permitting purposes. As stated in the final Tailoring Rule, we are mindful of the role that biomass or biogenic fuels and feedstocks could play in reducing anthropogenic GHG emissions, and we do not dispute observations that many federal and international rules and policies treat biogenic and fossil fuel sources of CO_2 emissions differently. Nevertheless, we explained that the legal basis for the Tailoring Rule, reflecting specifically the overwhelming permitting burdens that would be created under the statutory emissions thresholds, does not itself provide a rationale for excluding all emissions of CO_2 from combustion of a particular fuel, even a biogenic one.

[1] See 74 FR 55351, under the definition for 'carbon dioxide equivalent'.

The fact that in the Tailoring Rule EPA did not take final action one way or another concerning such an exclusion does not mean that EPA has decided that there is no basis for treating biomass CO_2 emissions differently from fossil fuel CO_2 emissions under the Clean Air Act's PSD and Title V programs. The Agency is committed to working with stakeholders to examine appropriate ways to treat biomass combustion emissions, and to assess the associated impacts on the development of policies and programs that recognize the potential for biomass to reduce overall GHG emissions and enhance U.S. energy security. Accordingly, today we issued a Call for Information[2] asking for stakeholder input on approaches to addressing GHG emissions from bioenergy and other biogenic sources, and the underlying science that should inform these approaches. Taking into account stakeholder feedback, we will examine how we might address such emissions under the PSD and Title V programs. We will move expeditiously on this topic over the next several months. As we do so, we will continue to work with key stakeholders and partners, including the U.S. Department of Agriculture, whose offices bring recognized expertise and critical perspectives to the issues at hand.

Thank you again for your continued interest in this issue. If you have any questions, please contact me, or your staff may contact Cheryl Mackay in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2023.

Sincerely,

Gina McCarthy
Assistant Administrator

[2] Posted online at http://www.epa.gov/climatechange/emissions/biogenic_emissions.html

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-11-001-1129

JUL 1 1 2011

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Susan Collins
United States Senate
Washington, DC 20510

Dear Senator Collins:

Thank you again for the constructive dialogue regarding issues relating to EPA's Non-Hazardous Secondary Materials (NHSM) rule, the Boiler Maximum Achievable Control Technology (MACT) rule and the Commercial and Industrial Solid Waste Incinerator (CISWI) rule. In the Administrator's letter of June 27, 2011 she indicated that the agency is exploring various pathways to address your specific concerns regarding implementation of the NHSM rule. EPA is committed to issuing guidance to assist industry in applying the legitimacy criteria, and had requested that industry representatives provide the agency with supporting data to further inform the development of such guidance.

We received additional information from industry and based on this information and further discussions, we have developed the enclosed concept paper for the development of guidance. The paper identifies approaches to the guidance that EPA continues to evaluate for determining whether concentrations of contaminants in the NHSM are "comparable" to concentrations of those same contaminants in traditional fuels. These comparisons are important in ensuring that NHSM are being legitimately recycled and are not solid wastes, as well as recognizing the varied uses of such secondary materials as product fuels.

We are optimistic about our ability to develop guidance that meaningfully addresses the industry concerns and we are giving it the highest priority within the agency. We intend to complete internal development of draft guidance based on the concept paper by August 31, 2011. In addition, we continue to evaluate all available options available to address the issues raised.

Please be assured that EPA will continue to keep you informed of our progress in addressing the issues involved with the NHSM rule, as well as the related Clean Air Act rulemakings. If you or your staff have any questions regarding the enclosed concept paper, please contact me or your staff may call Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-1859.

Sincerely,

Mathy Stanislaus

Mathy Stanislaus
Assistant Administrator

Enclosure

AL-05-001-8422

United States Senate

WASHINGTON, DC 20510

December 2, 2005

The Honorable Stephen L. Johnson
Administrator
The Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

Dear Mr. Johnson:

We write to urge you to divide fiscal year 2006 Environmental Finance Center Network funds equally among the nine existing Environmental Finance Centers (EFCs).

In years past, each EFC has received an equal portion of federal funding in order to do its work. With the support of the Environmental Protection Agency's (EPA) Office of the Chief Financial Officer, the EPA Environmental Finance Team (EFT), and the EPA regions, the EFCs have collaborated on numerous projects and have leveraged their annual funding, generating over four times the volume of funds in additional resources to the amount provided in the base EFC funding.

In the past, the House and Senate Appropriations Committees have included specific language specifying that federal funding should go to existing EFCs. While such language was not included in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, we believe continuing to direct federal funds to existing EFCs is the best approach.

In order to continue the EFC collaborations that have developed over the years and have provided great returns on EPA's EFC investment, we urge you to provide funding to the existing EFCs with fiscal year 2006 funds. We believe the EFC network will be undermined if the existing centers are required to compete with each other or with different universities for federal funds.

Thank you for your attention to this request. Should you have any questions, please feel free to contact us.

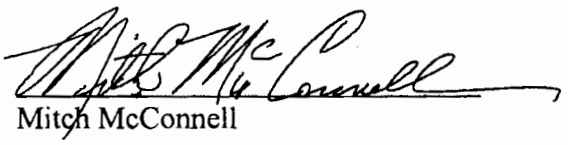
Sincerely,

Pete V. Domenici

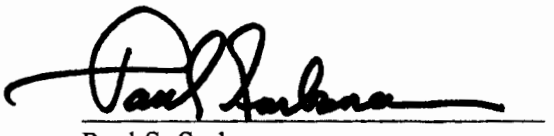
Larry E. Craig

Barbara A. Mikulski

Mike DeWine



Mitch McConnell



Paul S. Sarbanes

Jim Bunning

Susan M. Collins

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 2 9 2005

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter dated December 2, 2005 asking the Agency to continue its practice of exempting the Environmental Finance Center (EFC) Network from grants competition requirements and allowing the funds to be divided equally between the nine existing EFCs. Administrator Johnson has asked me to reply since the Office of the Chief Financial Officer provides the support for this program.

I am pleased to inform you that after carefully considering your letter, the Agency has concluded that the awards to the Environmental Finance Centers are exempt from competition under the Agency's Grants Competition Policy. The EFCs will be funded in FY 2006 at the same level as in FY 2005, pending additional across the board reductions. Divided equally among the nine Centers, the FY 2006 funding will allow the EFCs to continue to provide creative financing solutions to the real-world challenges faced by both the public and private sectors to promote a sustainable environment.

I hope this addresses your concerns and appreciate your expression of support for this excellent program. If you have any questions or would like additional information, please do not hesitate to contact me.

Best wishes,

Lyons Gray

Lyons Gray
Chief Financial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-06-001-6255

OCT 12 2006

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office (GAO) report recommendations on budgeting and allocating resources and a reporting requirement under the Clean Water Act. The report is entitled Clean Water Act: Improved Resource Planning Would Help EPA Better Respond to Changing Needs and Fiscal Constraints (GAO-05-721). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

GAO recommends that the Administrator, EPA, identify the key workload indicators that drive resource needs, ensure that relevant data are complete and reliable, and use the results to inform the agency's budgeting and resource allocation.

EPA Response

EPA agrees with the recommendation. As noted in the report, the Agency began reviewing methodologies to assess the alignment between workforce allocations and workload drivers in 2005. The Office of the Chief Financial Officer (OCFO) selected a contractor to analyze methodologies in use and data available, and work is underway.

The contract statement of work focuses on two areas. The first is a review of methodologies used by other agencies, an evaluation of the strengths and weaknesses of each methodology, and a discussion of approaches that may be suitable for EPA. The second will provide benchmarking information for common workload areas such as

information technology, contracts and financial processing tasks, as well as information that may be available on research, enforcement and facilities permitting. We will develop additional milestones in the future to determine next steps for improving data allocations based on workload indicators.

GAO Recommendation

To ensure that EPA is making the best use of resources dedicated to strategic workforce planning, GAO recommends that EPA coordinate ongoing planning efforts across the agency to avoid duplication. EPA's workforce planning efforts should build on what the agency has accomplished thus far in identifying priority occupations, needed competencies, and skill gaps for the agency as a whole. As a next step, consistent with our 2001 recommendations, EPA should focus its efforts on a ground level assessment and identify (1) the agency's workload and skill needs; (2) the skills and deployment of existing staff, geographically and organizationally; and (3) strategies to fill identified gaps.

EPA Response

EPA agrees with the recommendation and is coordinating complementary initiatives to address it. These initiatives involve collegial strategic workforce planning efforts across EPA to better understand the alignment between priorities, human capital allocations, and staffing resource needs. As discussed in reply to the recommendation above, EPA is actively pursuing an assessment tool for aligning workload indicators with workforce allocations.

The methodology analytic effort corresponds to additional ongoing efforts to identify needed skills, assess deployment of staff geographically and organizationally, and develop strategies to fill identified gaps. OCFO and the Office of Administration and Resources Management (OARM) are working jointly in these efforts to meet the objectives of the recommendation.

OARM's Office of Human Resources (OHR) developed a Strategic Workforce Plan (SWP) that identifies 19 mission-critical occupations (MCOs) necessary to accomplish EPA's goals and a blueprint for assessing the present competency levels of the MCOs. The SWP fulfills a requirement of the President's Management Agenda and the GAO recommendation to identify skill needs and necessary gap-reduction strategies.

As the SWP emphasizes, the selection and implementation of a competency assessment tool is essential to determine skill levels accurately. The results of the assessments will guide Agency managers' decisions on the most effective methods of closing the identified gaps. Managers may choose a strategy to recruit, provide developmental programs, and/or restructure the workforce to address the gaps efficiently.

EPA identified three MCOs for assessment initially. EPA completed assessments on information technology positions in September 2004 and human resources management positions in March 2006. A pilot assessment on leadership positions was completed in September 2005; a final assessment is pending. Once the leadership assessment is completed, future assessments will focus on financial management, scientific and technical positions. We are confident implementing SWP will identify and mitigate gaps successfully.

GAO Recommendation

GAO recommends that EPA meet its reporting responsibilities under section 516(b)(1) of the Clean Water Act or seek appropriate relief from the Congress.

EPA Response

EPA agrees with the recommendation. The Agency is required by law under section 516(b)(1) of the Clean Water Act to report to Congress every two years on the costs for implementing the Act. EPA plans to comply with the law and issue a report within the next two years.

Thank you for the opportunity to respond to the recommendations. If you have any questions, please contact me or have your staff contact Lauren Mical in EPA's Office of Congressional and Intergovernmental Relations at 202/564-2963.

Best wishes,

Lyons Gray

Lyons Gray
Chief Financial Officer

AL-06-001-7740

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 15 2006

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office (GAO) report recommendations on oil and hazardous substance spill management. The report is entitled Clean Water: Better Information and Targeted Prevention Efforts Could Enhance Spill Management in the St. Clair-Detroit River Corridor (GAO-06-639). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

GAO recommends that the Administrator direct EPA Region 5; and the Secretary of Homeland Security to take the following actions:

- maintain and update spill information to include the results of investigations and explore the feasibility of updating spill information maintained by the National Response Center (NRC) and
- determine whether existing spill notification processes can be improved or modified to provide reduced and consistent notification time frames.

EPA Response

EPA agrees with this recommendation and has taken steps to improve the information management issues cited in the report. In January 2005, Region 5 launched a new spill information management system, the Web Emergency Operation Center (WebEOC), that tracks and documents all spills reported to NRC and has the capacity to query data for targeted environmental enforcement/compliance assistance purposes. The new information management system has two distinct improvements. First, it links

Pollution Reports relating to spill events to associated NRC report numbers and WebEOC entries and second, it has the capacity to include a final spill volume estimate at the conclusion of response actions.

EPA and the Coast Guard will continue to discuss the importance of updating spill information in the NRC database. These discussions will focus on ensuring that accurate and current information is available to all users and that both parties agree upon necessary action steps.

GAO Recommendation

GAO recommends that the EPA Administrator consider gathering information on which facilities are regulated under its spill prevention program.

EPA Response

EPA agrees with this recommendation and is actively collecting information on the number and types of facilities that may be regulated under the spill prevention, control and countermeasure (SPCC) program. Currently, we are working with other federal departments (Departments of Commerce and Energy) and the Small Business Administration to improve our understanding of the regulated universe.

As part of the regulatory impact analysis associated with recent amendments to EPA's oil spill prevention program regulations prepared under the President's Executive Order 12866, EPA has improved the available information on the number and type of facilities that may be regulated by the SPCC program. This information, in combination with Dun and Bradstreet business data on various industry sectors, provides significantly improved data on the industrial sectors and facilities potentially regulated by the program. This information is coordinated and shared with all EPA regional offices.

GAO Recommendation

GAO recommends that the EPA Administrator direct Region 5 to develop goals for the frequency and extensiveness of its inspections.

EPA Response

EPA agrees with the recommendation. Region 5 intends to reassess the frequency and extensiveness of its inspections in Fiscal Year 2007 and propose an enhanced program in Fiscal Year 2008.

Thank you for the opportunity to respond to the recommendations. If you have any questions, please contact me or have your staff contact Lauren Mical in EPA's Office of Congressional and Intergovernmental Relations at 202/564-2963.

Best wishes,

Lyons Gray

Lyons Gray
Chief Financial Officer

and a contract through the Comprehensive Grants Management Reviews (CGMR) that are conducted on all Agency offices. If the review finds that an office is not complying with any EPA grants management policy (including the documentation of the grants versus contract decision) they are required to develop a corrective action plan to address deficiencies. This corrective action plan is then monitored by OGD to ensure that actions are implemented on a timely basis.

2. By March 31, 2005, OGD will modify the guidance on Grants Management Self Assessments (GMSA) to ask offices to review their compliance with contracts versus grants documentation requirements when conducting their self assessments. As with CGMRs, a corrective action plan must be developed and implemented to address grants management issues.

3. OGD will modify the electronic funding recommendation of the Integrated Grants Management System to require that project officers address the question of whether the agreement complies with the Federal Grants and Cooperative Agreements Act. The electronic funding recommendation form will also request that project officers enter or attach a justification for the decision to choose a grant or a contract. This action was implemented in the EPA Regions starting in April 2004 and will be fully implemented in headquarters by the end of 2006.

4. By March 31, 2005, OGD will issue a memorandum to all EPA offices reminding them of the importance of documenting the grants versus contract decision and outlining the requirements for an effective justification. This memorandum will provide offices with several model justification examples.

Thank you for the opportunity to respond to the recommendation.

Sincerely,

Charles E. Johnson
Chief Financial Officer

AL-04-000-1888

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the General Accounting Office (GAO) report recommendation concerning diesel emission standards. The report is entitled Air Pollution: EPA Could Take Additional Steps to Help Maximize the Benefits from the 2007 Diesel Emissions Standards (GAO-04-313). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

To maximize public health and air quality benefits, and minimize adverse impacts on affected industries, GAO recommends that the Administrator, EPA, consider additional opportunities to allay engine, fuel, and trucking industry concerns about the costs and likelihood of meeting the 2007 standards with reliable engine and fuel technology. Opportunities could include better communicating with all stakeholders on the remaining technological uncertainties. EPA could also convene another independent review panel to (a) address stakeholders' remaining concerns; (b) assess and communicate the progress of technology development; and (c) determine what, if any, additional actions are needed to meet the 2007 standards such as considering the costs and benefits of incentives for developing and purchasing the technology on time, and other alternatives.

EPA Response

As noted in the GAO report, EPA is conducting a comprehensive implementation program designed to ensure that the 2007 standards are implemented as smoothly as possible. We intend to continue this extensive work and will seek input from all stakeholders regarding actions the Agency can take to make sure the 2007 program is a success.

We understand that there is concern in the trucking industry regarding this program. We take those concerns seriously, and are working with that community of stakeholders. We believe that our ongoing progress reviews are a better method for the Agency to monitor industry progress, to report out on industry status and to be prepared to address any implementations issues that could arise in the coming years.

EPA seriously considers the input of our stakeholders and the suggestions of GAO. We intend to continue our progress reviews to address the concerns expressed by some in the trucking industry.

Thank you for the opportunity to respond to the recommendations.

Sincerely,

Charles E. Johnson
Chief Financial Officer

AL-04-000-1735

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 26 2004

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the General Accounting Office (GAO) report recommendations concerning the use of asset management concepts to maintain drinking water and wastewater infrastructure. The report is entitled Water Infrastructure: Comprehensive Asset Management Has Potential to Help Utilities Better Identify Needs and Plan Future Investments (GAO-04-461). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

Given the potential of comprehensive asset management to help water utilities better identify and manage their infrastructure needs, the Administrator, EPA, should take steps to strengthen the Agency's existing initiatives on asset management and ensure that relevant information is accessible to those who need it. Specifically, the Administrator should better coordinate ongoing and planned initiatives to promote comprehensive asset management within and across the drinking water and wastewater programs to leverage limited resources and reduce the potential for duplication.

EPA Response

We agree with the recommendation and have already taken steps to establish a process under which this enhanced coordination can take place. The senior management teams from the drinking water and wastewater offices met recently to review each other's agendas and to increase the awareness of projects underway across both offices. The session provided the impetus for the creation of a coordinating committee focused on the broader question of assuring awareness and avoiding duplication across current and planned efforts on sustainable systems.

GAO Recommendation

GAO recommends that the EPA Administrator explore opportunities to take advantage of asset management tools and informational materials developed by other Federal agencies.

EPA Response

We agree with the recommendation. We have met previously with the Department of Transportation to gain insight into the work they have underway on asset management. We found some common elements of opportunity for collaboration and will hold a meeting with the Department in the spring of 2005, and will invite other interested Federal agencies to attend, such as the Rural Utilities Service of the Department of Agriculture.

GAO Recommendation

GAO recommends that the EPA Administrator strengthen efforts to educate utilities on how implementing asset management can help them comply with certain regulatory requirements that focus in whole or in part on the adequacy of utility infrastructure and the management practices that affect it.

EPA Response

We have plans to sponsor additional asset management workshops in FY 2005. The workshops will include a discussion on the relationship between effective asset management and compliance, and our experience on asset management as driven by better business practices and processes. While service providers have shown great interest and support for EPA's initiatives to promote voluntary efforts and a significant number of leading utilities have voluntarily adopted these approaches, a number of local officials have voiced concern about the prospects of EPA mandating asset management. We are prepared to discuss the benefits, but have no plans to move toward a more regulatory-oriented structure to advance asset management.

GAO Recommendation

GAO recommends that the EPA Administrator establish a Website to provide a central repository of information on comprehensive asset management so that drinking water and wastewater utilities have direct and easy access to information that will help them better manage their infrastructure.

EPA Response

We agree with the recommendation and have already established a Website on sustainable infrastructure and intend to build the asset management content base in this context. We have also had discussions with the Water Environment Federation (WEF) and the Water Environment Research Foundation (WERF) on how we could work toward a mutually-supported Website. It is possible that the current project with WERF will support this Web-based information.

Thank you for the opportunity to respond to these recommendations.

Sincerely,

Charles E. Johnson
Chief Financial Officer

AL-05-001-7240

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 28 2005

OFFICE OF
WATER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office's (GAO) report recommendations concerning the removal and treatment of sewage in no-discharge zones (NDZ). The report is entitled Water Quality: Program Enhancements Would Better Ensure Adequacy of Boat Pumpout Facilities in No-Discharge Zones (GAO-04-613). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

To enable EPA regions to consistently develop site-specific estimates of the need for pumpout facilities and thereby better assess the adequacy of the pumpout services in reviewing applications for NDZ, GAO recommends that the Administrator of EPA require EPA regions to obtain and consider all information needed to develop site-specific estimates of pumpout facilities to adequately support proposed NDZ, such as information on pumpout fees and estimates of the number of boats in various size categories and/or those with holding tanks.

EPA Response

EPA agrees that this type of information is useful. Under current regulations, States provide EPA with information necessary to determine the availability of adequate pumpout facilities for removing and treating vessel sewage in NDZ. The current regulations support sound general estimates of pumpout facilities' needs, and EPA agrees that additional information would support more site-specific estimates. At present, EPA is planning to update internal guidance on deciding the adequacy of pumpout facilities when regional offices review applications for NDZ designations. When preparing the guidance, we will consider pumpout fees and estimates for boats in various size categories and/or those with holding tanks, among other concerns. Our current plan is to issue it in Fiscal Year 2006.

GAO Recommendation

To enable EPA regions to consistently develop site-specific estimates of the need for pumpout facilities and thereby better assess the adequacy of the pumpout services in reviewing applications for NDZ, GAO recommends that the Administrator of EPA require regions to conduct site inspections to verify that the pumpout facilities identified in proposed NDZ applications are available, in good working order, and accessible to boaters.

EPA Response

The guidance referenced above will address verification of data provided in NDZ applications and will include site inspections to the extent possible. EPA agrees that site visits would provide an accurate method of verifying the availability of pumpout facilities.

In the absence of site visits to NDZs, EPA completed a survey to evaluate the effectiveness of NDZs in 15 coastal and Great Lakes last year. An overwhelming majority of the responding boaters and marina operators in NDZs reported favorably on the adequacy, availability, accessibility, and functionality of pumpout facilities. The results of the questionnaire support our view that pumpout facilities are generally adequate.

GAO Recommendation

To better ensure that the boaters using on-board portable toilets in NDZ have adequate facilities for the safe and sanitary removal and treatment of sewage from their boats, GAO recommends that the Administrator of EPA require regions to evaluate the adequacy of dump station facilities when determining whether adequate facilities for the safe and sanitary removal and treatment of sewage from all boats are reasonably available.

EPA Response

EPA agrees that dump stations should be considered in the evaluation of potential NDZs and will address this issue in the updated guidance. The guidance will stress that the regions review information on the adequacy and availability of dump station facilities in order to make informed decisions on site-specific applications.

GAO Recommendation

To ensure that pumpout and dump station facilities remain available in existing NDZs, GAO recommends that the Administrator of EPA develop a mechanism or mechanisms to help ensure that facilities in established NDZ remain adequate and available over time, seeking additional authority, if needed, to require periodic recertifications in which the adequacy and availability of facilities would be reevaluated by EPA or by reviewing periodic state assessments of the adequacy and availability of facilities in existing NDZ.

EPA Response

EPA agrees that maintenance of NDZs and the adequacy of facilities over time is important. EPA will incorporate feasible mechanisms into the forthcoming guidance to ensure that NDZ facilities are adequate over time.

EPA is exploring additional support for the enhancement and implementation of programs for NDZs. For example, EPA supports state "Clean Marina" programs that encourage marinas to adhere to standards, including continuous monitoring and oversight of pumpout facilities. EPA also supports the Clean Vessel Act by reviewing state grant applications for the construction, renovation, operation and continued maintenance of pumpout and dump station facilities on behalf of the Fish and Wildlife Service. The Fish and Wildlife Service approves and funds these applications as authorized by the Clean Vessel Act.

GAO Recommendation

Due to the current confusion about the Coast Guard's enforcement role for NDZ, GAO recommends that the Coast Guard and EPA 1) meet with the relevant states to review the enforcement roles in the state-designated NDZ; 2) determine whether current enforcement is adequate, and 3) clarify the respective enforcement roles in EPA and Coast Guard guidance and, if appropriate, revise federal regulations.

EPA Response

EPA agrees that an enforcement presence is important to encourage boater and marina compliance with regulations in NDZs and that clarification of enforcement roles among EPA, the Coast Guard and the States would strengthen enforcement activities. As a partner in enforcement of NDZs, EPA will invite the Coast Guard to discussions on identifying roles and mechanisms for improvement during preparation of the guidance document.

Thank you for the opportunity to respond to the recommendations. If you have any questions, please contact me or your staff may contact Betsy Henry in EPA's Office of Congressional and Intergovernmental Relations at 202-564-7222.

Sincerely,

Benjamin H. Grumbles
Assistant Administrator

AL-05-000-4115

SUSAN M. COLLINS
MAINE

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United States Senate

WASHINGTON, DC 20510-1904

COMMITTEES
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, CHAIRMAN
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

March 9, 2005

Mr. Charles L. Engebretson
Associate Administrator of Congressional
and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Dear Mr. Engebretson:

I write in support of the following applications for funding from the Environmental Protection Agency to enable and expedite the clean up of the site of the former Eastern Fine Paper Company (EFP) mill in Brewer, Maine. Eastern Pulp and Paper Company, the owner of EFP, declared bankruptcy and the EFP mill was closed when no buyer could be found. The property involved is extensive, borders the Penobscot River, and has problems which can be anticipated at the site of a paper mill which had been in business for decades.

Members of my staff have spoken with the regional office about these grants, and I understand that a decision on them is expected in the near future:

EPA Brownfields Cleanup Grant, $200,000: The application for these funds came from South Brewer Redevelopment, LLC (SBR), a wholly-owned limited liability company set up by the city to own and redevelop the property. These grant funds will be utilized to remediate environmental contamination issues on the property. Funds will be utilized to cover SBR/Consultant costs for planning, oversee and document clean-up activities, pay for clean-up of hazardous material-contaminated soils on the property, fund the removal and disposal of asbestos containing materials, and provide for public outreach.

EPA Brownfields Assessment Grant, $350,000: These funds were applied for by the city of Brewer. The application was prepared to request a $200,000 grant award, with a request for an additional $150,000 above that amount through a waiver. These funds would enable the city to conduct additional Phase II subsurface investigations on the site, fund efforts to assess contaminants identified on the site and prepare remediation plans appropriate to those contaminants, and conduct public meetings/planning sessions.

EPA Brownfields Revolving Loan Fund Grant, $1,000,000: These funds were applied for by the City of Brewer. The city's application requests these funds to provide low-interest loans and sub-grants for the remediation of the site. Funding would also allow for the establishment and operation of the revolving loan fund, clean-up planning and oversight, actual clean-up activities, and efforts to provide for community involvement.

I urge a thorough review of and favorable action on these applications, consistent with the applicable laws and regulations.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:jdc

AL-05-000-1074

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MAINE

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COMMITTEES
GOVERNMENTAL AFFAIRS, CHAIRMAN
ARMED SERVICES
SPECIAL COMMITTEE ON AGING
JOINT ECONOMIC

United States Senate

WASHINGTON, DC 20510-1904

January 5, 2005

Administrator Micheal Leavitt
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Leavitt:

I was recently contacted by the Chief of the Penobscot Nation Tribe in Maine. He expressed concern to me regarding several paintings of Native Americans on the fifth and seventh floors of the EPA building.

The United States maintains government to government relations with America's federally recognized Indian Tribes. In order to uphold the best possible working relations, it is important to preserve an environment in the federal workplace which is conducive to positive relations between America's Tribes and the United States government. Furthermore, it is particularly important in our multi-cultural society to foster a work environment free of stereotypes and racially insensitive depictions.

While I certainly understand the importance of historical preservation, this goal must be balanced with the goal of promoting a non-discriminatory and inoffensive environment. I would appreciate it if you would take this opportunity to respond to Chief Sappier, as well as to me, regarding this issue.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

SMC:clp

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 11 2005

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

The Honorable Susan M. Collins
United States Senate
Washington, DC 20510

Dear Senator Collins:

I am writing in response to your correspondence of January 5, 2005, to Administrator Leavitt, concerning several of the historic murals in the Ariel Rios Federal Building in Washington, D.C. You have asked that we provide information to you and to Chief Sappier of the Penobscot Nation Tribe regarding the murals.

The Environmental Protection Agency (EPA) is a tenant in the federally-owned Ariel Rios Building. The General Services Administration (GSA) controls and manages this historic building, which includes 24 murals commissioned as part of the original construction, under the 1930's era Works Progress Administration. EPA does not have the authority to make any decisions regarding the maintenance or disposition of the murals. As referenced in your correspondence, several of the murals have generated a great deal of controversy and complaint from some EPA employees. Specifically, the murals entitled, "The Dangers of the Mail," created by artist Frank Mechau in 1935 have been the subject of considerable debate and discussion within the Agency.

GSA has been very clear in its position that the Historic Preservation Act, and Federal policy concerning its national arts collection, requires that the murals remain in place, in view, in the Ariel Rios Building. In an effort to find a compromise that respects the interests on both sides of this debate, EPA has continued to seek and receive input from a wide range of employees concerning the murals. Late last year, EPA reached an agreement with GSA regarding the presence of the murals in the building. While the murals will remain in the building available for viewing, appropriate steps have been taken in the area of the murals (display screens showing alternative art) to allow those who wish not to view them to see alternative artwork and information pieces related to the history of the era or to the many activities and mission of the EPA. We are hopeful that this measure will respect the interests of parties on both sides of this issue.

Over the past several years, the Assistant Administrator for the Office of Administration and Resources Management has met regularly with representatives of the American Indian Advisory Committee to discuss this issue and to explain and seek input on the measures

described above. While I recognize that these efforts have not fully satisfied all persons interested in this issue, they represent a good faith effort on the part of EPA to take steps within the bounds of the Agency's authority. Further, they represent the genuine effort of the Agency to enlist GSA's assistance in finding a balance among the competing and strongly held views among EPA employees.

We will continue to work with GSA to find appropriate means to educate employees regarding the Works Progress Administration programs, and to promote healthy debate and discussion regarding the art and architecture of our Federal buildings. If you have questions or wish to discuss this further, please contact me at (202) 564-4600, or have your staff contact Ettrina Vanzego in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2792.

Sincerely,

David J. O'Connor

David J. O'Connor
Acting Assistant Administrator

cc: James G. Sappier
Chief, Penobscot Nation Tribe

AL-05-000-2276

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 18 2005

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan Collins
Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Madam Chair:

I am transmitting the Environmental Protection Agency's (EPA) response to the Government Accountability Office (GAO) report recommendations concerning Federal agencies' practices associated with key legislative and other requirements for information technology (IT) strategic planning/performance measurement and IT investment management. The report is entitled Information Technology Management: Governmentwide Strategic Planning, Performance Measurement, and Investment Management Can Be Further Improved (GAO-04-49). EPA prepared this response pursuant to 31 U.S.C. 720.

GAO Recommendation

To improve the Agency's IT strategic planning/performance measurement processes, GAO recommends that the EPA Administrator take the following six actions:

– document the Agency's IT strategic management processes and identify how they are integrated with other major departmental processes, such as the budget and human resources management;

– include in the Agency's annual performance plan the resources and time periods required to implement the information security program plan required by Federal Information Security Management Act (FISMA);

–develop a documented process to develop IT goals in support of Agency needs, measure progress against these goals, and assign roles and responsibilities for achieving these goals;

–develop performance measures related to the effectiveness of controls to prevent software piracy;

–track actual-versus-expected performance for the Agency's measures associated with the IT goals in the information resources management (IRM) plan; and

–develop a mechanism for benchmarking the Agency's IT management processes, when appropriate.

EPA Response

EPA agrees with the recommendation and is fully committed to improving the Agency's IT strategic planning and performance measurement processes. The Agency continues to move forward with strategic, tactical and operational measures to advance the integration of mission goal planning and IT planning to deliver performance-based, cost effective, secure services to enable EPA's mission to protect human health and the environment. EPA's security program applies risk-based best practices to protect assets and ensure that resources are available and targeted to those areas of greatest importance. The Office of Management and Budget (OMB) recently highlighted EPA's successful security program, including its performance-based approach in the "Fiscal Year 2005 Analytical Perspectives" report. OMB stated that EPA has excelled at protecting their information technology assets. The report continues to explain that

> "EPA has evaluated the risks to, and certified the security of, its IT systems. Beyond documentation, however, EPA has implemented quantifiable measures of repelled attacks and blocked viruses. Internal scorecards are used to measure success and managers are encouraged to compete for top scores. By focusing on cyber-security, EPA has taken great steps to protect the integrity of the Agency."

The information provided in Enclosure 1 identifies additional steps EPA has taken to strengthen mission and IT strategic integration and performance measures.

In addition, EPA is preparing to promulgate Agency directives that will formalize the process for integrating business and IT strategic planning through our Enterprise Architecture (EA) program. Kimberly Nelson, EPA's Chief Information Officer, noted in testimony before the U.S. House of Representatives Subcommittee on Technology, Information Policy, Intergovernmental Relations and the Census, that "it is important that each Federal agency integrate EA into the fabric of their respective strategic management culture so they can begin to eliminate redundancies, target citizen services, and integrate information for improved decision making."

GAO Recommendation

To improve the Agency's IT investment management processes, GAO recommends that the EPA Administrator take the following three actions:

– include net risks, risk-adjusted return-on-investment, and qualitative criteria in the Agency's project selection criteria;

– establish a policy requiring modularized IT investments; and

– fully implement an IT investment management control phase, including the elements contained in practices 2.15, 2.16, and 2.17 [as cited in the report].

EPA Response

EPA agrees with this recommendation and is committed to investing wisely in IT programs. We use business case development methods to guide the decision making processes. These methods include analysis of qualitative criteria, projected net risk-adjusted return, and consideration of alternative options. In 2003, EPA initiated a quantitative risk-based return analysis using applied information economics methodologies for two major IT projects. We evaluated this pilot program and decided to expand it to include other projects in 2004. Our investment decisions are also based on development of incremental projects and resource availability.

Currently we are developing control and evaluation project phases as identified under practices 2.15, 2.16 and 2.17. These measures will emphasize controlling costs, project delivery schedule, and performance outcomes vs. return on investment. We will also address the OMB requirement for implementing earned value management practices. To date draft manuals have been written to implement these phases, and we expect full implementation by the end of the second quarter in fiscal year 2005.

Thank you for the opportunity to respond to the GAO recommendations.

Sincerely,

Charles E. Johnson
Chief Financial Officer

Enclosure

AL-11-000-7103

United States Senate

WASHINGTON, DC 20510

May 5, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue N.W.
Washington, DC 20004

Dear Administrator Jackson:

As you are aware, Congress passed H.R. 1473, the Department of Defense and Full-Year Continuing Appropriations Act of 2011, last month. Unfortunately, this legislation did not include specific language to provide funding for technical assistance and training for rural water utilities. This funding has been critical in helping rural communities comply with national drinking water standards since 1976. In dealing with complex regulations, small communities often need assistance to improve and protect their water resources. In implementing national priorities and standards, we must also address the unique needs of these communities.

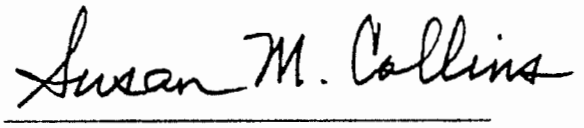
Secondly, it is important to place greater weight on initiatives that are effective and produce tangible results when making funding decisions. The technical assistance made possible by past funding of this program has enabled rural water utilities to provide quality drinking water in spite of their limited economies of scale. This assistance has and will continue to help rural water systems from Louisiana to Kansas to Alaska, and every other state in the nation, comply with national laws and regulations.

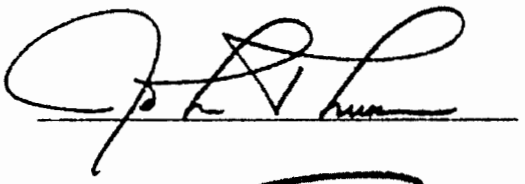
We respectfully request that you allocate $15 million in the Environmental Protection Agency Programs and Management account to carry out the Safe Drinking Water Act's technical assistance authorization provision (PL 104-182, 42 USC § 300j-1). If it is not possible to fund this competitive grant program, please let us know how the Environmental Protection Agency intends to ensure our nation's rural communities have the resources necessary to deliver safe drinking water. Thank you in advance for your consideration of this critical issue.

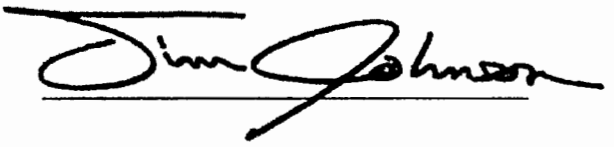
Sincerely,

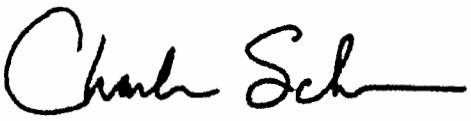
Mary L. Landrieu

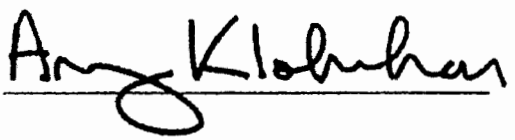
Jerry Moran

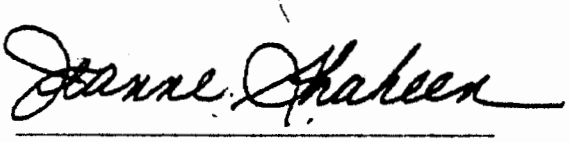


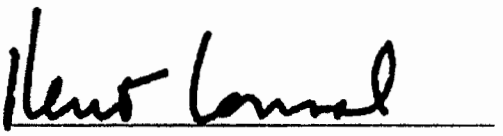


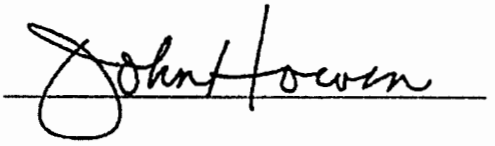


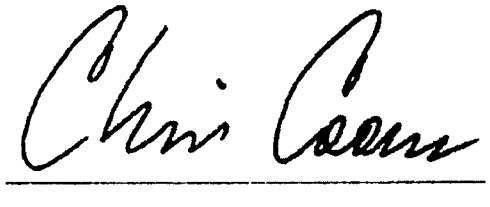


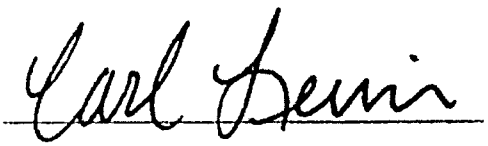


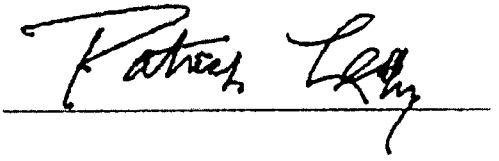


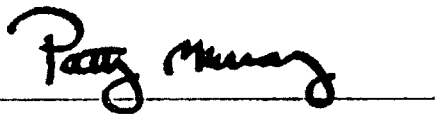


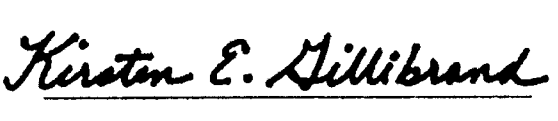


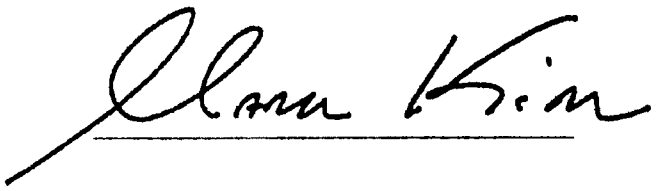


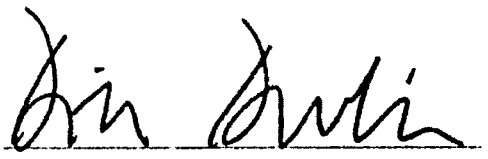


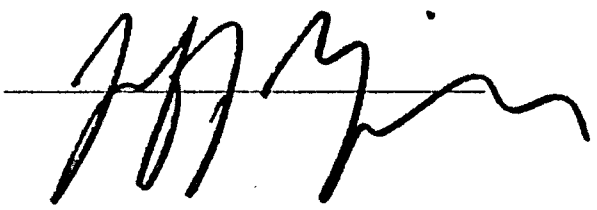


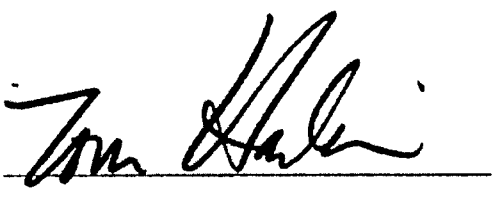












MARK ROYER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 6 2011

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your letter of May 5, 2011, to Lisa Jackson, Administrator of the U.S. Environmental Protection Agency (EPA), requesting that the Agency allocate $15 million in its Programs and Management account to carry out the Safe Drinking Water Act's technical assistance authorization provision. As you describe, small communities often need assistance to improve and protect their water resources.

EPA gives consideration to the Nation's many critical environmental concerns and threats to human health, including those pertaining to rural water utilities. The Agency shares your commitment to supporting the needs of rural water utilities to help them comply with national laws and regulations.

The Agency is currently working to determine the best approach to support the technical assistance and training needs of rural communities. As the FY 2011 Enacted Operating Plan has recently been finalized, the review of options is ongoing.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Christina Moody, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-0260.

Sincerely,

Barbara J. Bennett
Chief Financial Officer

AL-12-001-8220

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 25 2012

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Susan M. Collins
Ranking Member, Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

The U.S. Environmental Protection Agency is committed to reducing improper payments through a cost-effective payment recapture audit program that serves to prevent, detect and recover overpayments. In accordance with the Office of Management and Budget's Memorandum M-11-16, *Issuance of Revised Parts I and II to Appendix C of OMB Circular A-123*, Part I.B.18, the EPA is providing an annual report that describes recommendations identified by our internal payment recapture audit program as well as the corrective actions taken to address those recommendations.

The enclosed report details the agency's strategy for reducing and recapturing improper payments in FY 2012 and beyond. In accordance with the Improper Payment Elimination and Recovery Act of 2010, the EPA utilizes an internal payment recapture audit program. Historically, the EPA has maintained a low rate of improper payments through a strong system of internal controls.

If you have any questions, please do not hesitate to contact me or to have your staff contact Christina Moody of the EPA's Office of Congressional and Intergovernmental Relations. She can be reached at (202) 564-0260.

Sincerely,

Barbara J. Bennett
Chief Financial Officer

Enclosure

Enclosure

U.S. Environmental Protection Agency
Summary of FY 2012 Progress Regarding the
Improper Payments Elimination and Recovery Act of 2010

Background

The Improper Payments Elimination and Recovery Act of 2010 requires each agency to periodically review and identify all programs and activities that may be susceptible to significant improper payments. IPERA amended the Improper Payments Information Act of 2002, significantly increasing requirements for payment recapture efforts by expanding the types of payments that must be reviewed and lowering the requirement threshold for a payment recapture audit program from $500 million to $1 million of annual outlays in each program or activity. IPERA also requires that agencies report on recommendations from payment recapture auditors by November 1 of each year.

Due to the unique nature of programs at the EPA, the agency obtained OMB's approval to report on improper payments by payment stream rather than by program or activity. These payment streams include grants, contracts, commodities and the State Revolving Funds. Past experience has shown that it was not cost effective for a contractor to conduct payment recapture audits on behalf of the agency. As a result, the agency adopted an internal payment recapture audit program; therefore, this report presents a summary of internal recommendations and improvements identified in FY 2012.

EPA's Payment Recapture Audit Program

The agency maintains a strong program of internal controls and reviews which are part of its payment recapture audit program. The agency reviews and analyzes accounting and financial records, supporting documentation and other pertinent information within the grants, contracts, commodities and State Revolving Funds payment streams. The agency's payment recapture audit program includes the following elements:

- Contract invoice reviews;
- Defense Contract Audit Agency audits of large contracts;
- Post-award reviews (baseline and advanced monitoring) of grants;
- State revolving funds transaction testing; and
- Policy Verification Program.

The agency also submits improper payment information annually in accordance with OMB Circular A-136. The sections below outline efforts undertaken in each of the agency's payment streams during the previous fiscal year to support information provided in the FY 2012 Agency Financial Report.

The Do Not Pay Solution and the General Service Administration's System for Award Management

The agency is integrating the use of two new tools, the Do Not Pay Solution and GSA's SAM, to reduce and eliminate payment errors before they occur.

The Do Not Pay Solution is a web-based tool that uses data analytics to determine if awardees meet the federal funding eligibility criteria. The agency is planning to implement the Do Not Pay solution in five phases, which are outlined below:

- Phase 1: Development of Plan (May – August 2012) (Completed)
- Phase 2: Initial deployment (September – December 2012)
- Phase 3: Regular usage (beginning January 2013)
- Phase 4: Establishment of metrics (April – May 2013)
- Phase 5: Review of current processes (June 2013)

The agency intends to use the Do Not Pay solution primarily for conducting pre-payment and post-payment reviews. Pre-payment reviews will consist of continuous monitoring of the agency's vendor file on a weekly basis, and post-payment reviews will consist of batch matching of the agency's payment file on a daily basis. In each case, the agency's payments will be checked against the following data sources within the Do Not Pay solution: the Excluded Parties List System (public version), the Central Contractor Registration, and the Death Master File. The agency is currently in the initial deployment phase, and regular usage of the Do Not Pay solution is scheduled to begin in January 2013.

In addition to the Do Not Pay solution, the EPA is using GSA's SAM to verify the eligibility of recipients before an award is made. SAM consolidates nine award management systems into one centralized acquisition and award support system. This streamlines pre-award processes, eliminating the need to enter the same data multiple times, and consolidates hosting to make the process of doing business with the government more efficient. The EPA's adoption and use of SAM will achieve efficiencies in pre-award eligibility verification as well as help to prevent improper payments from being made to ineligible recipients.

Contracts/Commodities

Program description:

In FY 2012, the Office of the Chief Financial Officer processed 33,500 contract invoice payments in the amount of $1.5 billion and 35,000 commodity invoice payments in the amount of $300 million. Improper payments in the contracts and commodities payment streams were negligible as the error rate for contracts was only 0.06% while the error rate for commodities was only 0.13%. When improper payments occur in these payment streams, strong collaboration between agency contracting officers, program invoice approving officials, contractors, and vendors enable the agency to recover them promptly. For example, these two payment streams maintained a combined recovery rate of 95% in FY 2012 which breaks down to 89.5% for commodities and 96.5% for contracts. Funds are either offset against a current/subsequent invoice or aggressive follow-up is made to collect the amount due.

In addition, rigorous administrative and sophisticated system edits controls are incorporated into the OCFO's payment processes. When the IPIA of 2002 was enacted, the OCFO developed its first improper payment report in FY 2003 to monitor contract disbursements. An additional report was

initiated in FY 2005 to monitor commodity payments which is comprised of simplified acquisitions, utilities, lease agreements and training payments. These monthly reports act as a key internal control in operational monitoring for senior managers and staff to pinpoint trends and other abnormalities to prevent future improper payments. Each report provides summary and detail-level information in a readily understandable format with performance goals achieved. While OMB's current compliance goal for improper payment is less than 2.5 percent based on total dollar outlays, the OCFO's internal goals have been aggressively set at less than 1.0 percent (i.e., 99 percent accuracy) for both number of payments and dollar outlays. One of the keys to success has been preventative reviews performed prior to the customary invoice examination process. For example, for contract disbursements there were 2,118 special reviews conducted on the 33,500 invoice payments processed in FY 2012. Furthermore, to comply with IPERA and the American Recovery and Reinvestment Act of 2009, each report was expanded to include recovery information and detection if an improper payment occurred against ARRA funding.

Internal Recommendation: Ensure external audits performed on behalf of the agency are fully disclosed and included in the Agency Financial Report.

In FY 2013, OCFO plans to continue working closely with other organizations to ensure external audits performed on behalf of the agency are fully disclosed and reported in the AFR. In FY 2011, the OCFO started this effort through the disclosure of audit findings included in Table 6 of the AFR. With regard to financial audits performed in FY 2012 against contracts and commodity payments, no audit findings were identified with respect to improper payments. These audits included annual A-123 internal control review, FY 2011 Recovery Act Stewardship Plan Policy Verification Review and the FY 2011 Annual Financial Statement Audit conducted by the Office of the Inspector General. The agency also improved its payment recapture audit program by improper payments identified from Single Audit and OIG financial reports.

Grants

Program description:

The EPA's goal is to determine and correct potential issues at the earliest stage and lowest level possible. The majority of grants improper payments occur due to administrative errors which may be identified early and resolved as soon as they are detected. Some administrative errors arise from issues such as high rates of grantee staff turnover, inadequate or missing documentation, or systems that may not be fully suitable for proper grants management. The agency performs the following activities to prevent, detect, monitor and mitigate improper payments:

1) Check the SAM and/or Excluded Parties List System prior to awarding a grant to ensure that applicants are not suspended or debarred.

2) Educate grant recipients to avoid costs that are unallowable or unallocable to the grant and properly document all costs incurred during the entirety of a grant.

3) Randomly select 120 recipients for advanced monitoring review which includes transaction testing. The Grants Management Official may choose to perform advanced monitoring on a recipient that appears to be higher risk instead of the randomly selected recipient.

4) Project Officers and Grant Specialists perform baseline monitoring on every grant each year from a programmatic and administrative perspective and examine funds drawn for compatibility with the grant project schedule and work plan. Every grant is monitored at least twice each year, with ARRA grants monitored a minimum of eight times each year.

5) Completion of baseline monitoring reviews is tracked in a central database, and quarterly performance reports are provided to senior managers. In addition, baseline monitoring is included as a responsibility in Project Officer and Grant Specialist performance agreements as appropriate.

6) The Las Vegas Finance Center monitors grants funds drawn for unusual activity such as funds drawn too early, unusually large draws, or overly frequent or infrequent draws.

7) Program offices and regions conduct advanced program reviews on 10 percent of their active recipients. While these reviews primarily monitor technical aspects of the grant award, they may examine expenditures for the grant project.

8) Resolve Single Audit and OIG forensic audits and refer recipients to the OIG for further investigation when criminal activity is suspected.

In performing advanced monitoring reviews of selected recipients, the agency examines a sample of draw-downs made by the recipient within the preceding year. In the event improper payments are identified from reviewing these draw-downs, the agency's Las Vegas Finance Center is notified upon completion of the improper payment review process, and recovery is initiated. Advanced monitoring reviews also identify the cause and condition for identified improper payments and require recipients to implement corrective actions to minimize the risk of future improper payments. In addition to recovering any improper payments identified, the agency may take enforcement actions such as placing a recipient on reimbursement, terminating a grant agreement or suspending and debarring a recipient when warranted. If potential improper payments are indicated from baseline monitoring, advanced program monitoring or financial monitoring of assistance agreements, a more thorough advanced monitoring review may be conducted to identify any improper payments and recovery efforts initiated through the Las Vegas Finance Center.

Recommendation: Expand and strengthen the advanced monitoring process, and expand reporting to include all five different types of grants recipients.

Starting in Calendar Year 2011, the EPA expanded from only reporting on non-profit organizations to the following five different types of recipients: non-profits, tribes, state government entities, local governments, and universities. In addition, the Office of Grants and Debarment switched from a two-year review cycle to a single-year review cycle whereby each recipient-type is reviewed on an annual basis. OGD now randomly selects 120 grant recipients for review which are stratified into two grantee categories: higher-risk and lower-risk. These categories were derived based upon analysis of data from the previous five years of post award reviews. Of these 120 grant recipients, ninety are selected proportionally from the higher-risk group consisting of local governments, non-profits and tribes, and thirty are selected proportionally from the lower-risk group consisting of states and universities. These grantees are currently being reviewed to ensure proper systems are in place for managing grant funds and proper documentation for expenditures is maintained.

State Revolving Funds

Program description:

The SRF program conducts onsite reviews in all 50 states (plus Puerto Rico) each year. During the state reviews in FY 2012, the agency's financial analysts tested four base transactions and two ARRA transactions per state, examining all associated invoices. Starting in FY 2010, the SRF program had broadened the scope of its transaction testing to include ARRA funds and also increased the sampling of base funds in each state from two to four transactions.

When improper payments are identified, they are discussed with the state during the review. Many of the payment errors are immediately corrected by the state or are resolved quickly by adjusting a subsequent invoice. For issues requiring more detailed analysis, the state provides the agency with a plan for resolving the improper payments and reaches an agreement on the agreed upon course of action. The agreement is described in the EPA's Program Evaluation Report and the agency follows up with the state to ensure compliance.

During the course of FY 2012 transaction testing conducted as part of its improper payments program, the EPA tested transactions that led to the identification of a significant amount of improper payments in connection with grants made to the Commonwealth of Puerto Rico under the Clean Water State Revolving Fund program and minor amounts made in connection with the Drinking Water State Revolving Fund program. The OCFO, the Office of Administration and Resources Management, the Office of Water and Region 2, in consultation with the Office of the Inspector General, are conducting a comprehensive review of this matter and, as necessary, will put additional internal controls in place and take corrective action to ensure proper stewardship of SRF grant funds.

Internal Recommendation: Expand transaction testing in the SRF program for FY2013.

In FY 2012, the agency elected to maintain its expanded sampling of base funding of four transactions per state, even though the amount of base funding has declined relative to past years. Beginning in FY 2013, the agency will further strengthen the improper payment program by establishing a new, OMB approved sampling methodology.

Policy Verification of the Recovery Act Stewardship Plan

Program Description:

To ensure that ARRA funds are managed and spent effectively, Title XV of the Recovery Act establishes a stringent framework for government-wide accountability and transparency. In response to these provisions and to ensure the sound financial management and oversight of ARRA-funded activities, the EPA developed an agency-wide Recovery Act Stewardship Plan. Based upon the Government Accountability Office's five Internal Control Standards, the RASP represents the agency's comprehensive risk assessment and risk mitigation strategy for its ARRA-funded activities. Specifically, the plan identifies risks, internal controls, monitoring activities and contingencies across seven functional areas affected by ARRA funding, including: (1) grants, (2) contracts, (3) interagency agreements, (4) human capital/payroll, (5) budget execution, (6) performance reporting, and (7) financial reporting.

In FY 2011, the EPA's OCFO, in collaboration with the agency's Regional Comptrollers, initiated an agency-wide effort to review and verify implementation of the RASP. The population of ARRA awards subject to review consisted of 850 awards, totaling $7.18 billion. Based on guidance established in OMB Memorandum M-03-13 (issued May 21, 2003), 110 awards totaling $3.88 billion were randomly selected for review, including 79 grants ($3.72 billion), 25 contract actions ($94 million) and six interagency agreements ($68.5 million).

Drawing directly from the RASP, the EPA developed a review protocol based on: (1) the risks identified in the RASP; and (2) the associated policies and procedures established by the RASP to mitigate each identified risk. Detailed, onsite reviews were then conducted for each sample award in EPA regions, finance centers and headquarter program offices. In general, the agency reviewed documentation associated with each sample award for evidence demonstrating that each control activity established in the RASP was completed appropriately.

Internal Recommendation: Utilize corrective actions identified in the RASP policy verification.

Results provided an impartial review of internal controls, as well as an assessment of improper payments in ARRA awards. The policy verification results compare favorably with the risk susceptibility threshold set forth in the IPERA as well as the agency's historical improper payment numbers.

In keeping with the agency's commitment to improving program performance, corrective actions were recommended to resolve the issues identified during onsite reviews. In the majority of cases, the agency already has instituted corrective actions and recovered funds where appropriate. In particular, the agency is working to improve documentation of indirect costs and identify best management practices.

Conclusion

In FY 2012, the EPA's payment recapture program discovered a few high dollar improper payments through transaction testing. This is an example of how the agency is continually working to expand its efforts in preventing, detecting, and recovering improper payments. The EPA has established controls by implementing new analytics and web tools to prevent and detect improper payments in the form of the Do Not Pay Solution and SAM.

The agency has also increased the amount of transaction testing and advanced monitoring. The number of advanced monitoring reviews for grants has doubled, and all grantee types are now reviewed for improper payments. Furthermore, the SRF program will expand transaction testing in FY 2013, and the agency will build upon the results of its Policy Verification efforts. The EPA is committed to continued improvement and looks forward to further improvements in coming years.